Supreme Court, U.S.
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NO._____

IN THE

Supreme Court Of The United States

OCTOBER TERM 1995

JASON RICHARDS and FANNIE HILL,

Petitioners,

v.

JEFFERSON COUNTY, ALABAMA and BIRMINGHAM-JEFFERSON CIVIC CENTER AUTHORITY,

Respondents.

PETITION FOR WRIT FOR CERTIORARI TO THE SUPREME COURT OF ALABAMA

BRIEF OF PETITIONER

WILLIAM J. BAXLEY
JOEL E. DILLARD
Baxley, Dillard, Dauphin & McKnight
2000 Sixteenth Avenue South
Birmingham, Alabama 35205
(205) 939-0995

Attorneys for Petitioners
Jason Richards and Fannie Hill

83 pp

QUESTIONS PRESENTED FOR REVIEW

I.

Can Alabama, by interpretation of its state case law pertaining to res judicata, deny plaintiffs' never-before-presented, and never-before-heard, federal constitutional claims without denying them due process of law and equal protection of the laws?

We contend that it cannot, and that the Alabama Supreme Court's reversal of a trial court's order denying summary judgment below — unless reversed by this Honorable Court, after a grant of the writ — will effectively deny these plaintiffs any opportunity to ever be heard upon meritorious federal constitutional claims.

II.

Does the convoluted exemption scheme described in Alabama Justice Maddox' dissenting opinion — attacked by plaintiffs for the first time ever in the case at bar — warrant reversal of the Alabama Supreme Court's decision in the case at bar, after a grant of the writ, on federal equal protection and due process grounds?

We contend that it does.

CERTIFICATE OF INTERESTED PERSONS

Respondents' Counsel	Edwin A. Strickland Charles S. Wagner Jeffrey M. Sewell William Slaughter Charlie D. Waldrep Thomas L. Stewart
Petitioners' Counsel	William J. Baxley Joel E. Dillard
Respondents	Jefferson County, Alabama Birmingham-Jefferson Civic Center Authority
Trial Judge	Hon. John Rochester
Petitioners	Jason Richards Fannie Hill and a class of similarly situated persons
Supreme Court of Alabama	Hon. Sonny Hornsby Hon. Hugh Maddox Hon. Reneau Almon Hon. Janie L. Shores Hon. J. Gormon Houston Hon. Mark Kennedy Hon. Kenneth F. Ingram Hon. Ralph Cook Hon. Terry Butts

No other persons are known to have participated directly or indirectly in the appeal of this matter.

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STATEMENT OF GROUNDS OF JURISDICTION

The jurisdiction of this Honorable Court is invoked pursuant to 28 U.S.C. § 1254 because this Petition is from a decision of the Supreme Court of Alabama in a civil case.

(i) Date of the decision: March 31, 1995

(ii) Application for Rehearing Overruled: June 9, 1995

(iii) No cross petition has been filed

(iv) Jurisdiction is based on 28 U.S.C. § 1254(1) and Rule 10.1(c) of the Rules of the Supreme Court.

STATEMENT OF THE CASE

(1) Nature of Case, Course of Proceedings and Disposition

On May 20, 1988 the Alabama Supreme Court decided *Bedingfield v. Jefferson County*, 527 So.2d 270 (Ala. 1988), rejecting three separate challenges to the county occupational tax here in issue on state law grounds. The same three state law issues had been decided adversely to the challengers in a state trial court, prompting that appeal. (R. 265-269). *Bedingfield, supra*, was not a class action, and did not decide any federal question in the trial or appellate court.

On April 21, 1992 Jason Richards and Fannie Hill filed a class action complaint in state court, attacking the exemption scheme built into the same county occupational tax, and claiming that the exemption scheme denied them due process of law and equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States, and under parallel provisions of the Constitution of Alabama.

A motion for summary judgment, based upon a defense of res judicata, claimed to result from the *Bedingfield* decision, was filed in the trial court on June 4, 1992.

On April 8, 1993 Jefferson County was granted summary judgment upon all state law claims, but summary judgment was denied as to petitioners' federal constitutional claims. (R 392-394) Jefferson County and an intervenor tax recipient, Birmingham-Jefferson Civic Center Authority, appealed the trial court's denial of summary judgment upon federal constitutional claims to the Alabama Supreme Court. (R. 425-428).

The Alabama Supreme Court reversed the trial court on March 31, 1995 and overruled an application for rehearing June 9, 1995.

(II) Statement of Facts with References to Record

In *Bedingfield*, which appears in the appendix as well as the record on appeal, the Alabama Supreme Court decided that Jefferson County Ordinance 1120 — the occupational tax here in issue — was not illegal because (1) a statute authorized the county to levy the occupational tax (2) the statute was general, rather than local legislation, and (3) the statute authorizing levy of the tax provided also for its collection. (R 231-235). Neither the trial court's decision in that case nor the decision of the Supreme Court of Alabama in that case contained any reference to whether the Act and the county ordinance violated any provision of the Federal Constitution. (R. 231-235, 265-269). Neither addressed nor decided the validity of the exemption scheme built into the tax. (R. 232-235, 265-289).

The county taxing ordinance appears in the appendix and the record (R. 30-31).

Jason Richards, a law firm courier and Fannie Hill, a domestic servant employed in commercial buildings, represent a sub-class of claimants who subsequently attacked the county taxing ordinance on behalf of themselves and all other non-federal employees who pay the tax. (R. 1-18) (Federal employees subject to the tax comprise yet

another separate sub-class which is not involved in this appeal). Richards' and Hill's complaint appears in the appendix and the record on appeal. (R. 1-18). They specifically claim "this action involves a violation of federal law for which 42 U.S.C. § 1983 provides a remedy" (R. 2), and allege that "[t]he occupational tax by its terms, and in actual practice, exempts from its levy, collection and payment businesses and vocations or occupations listed at Chapter 12, Article 2, Title 40, Code of Ala. 1975, as amended, which range from attorneys, certified public accountants, dentists and physicians to blueprint makers, casket manufacturers, pig iron storage operators, lightning rod installers and snuff retailers, and it includes a specific exemption for domestic servants in private homes." (R. 8) A complete list of exempted persons appears in the text of our argument, and in the dissent to the decision of the Alabama Supreme Court to which this petition is directed. Richards and Hill go on to complain that "[b]y its terms and in actual practice, it taxes all federal employees, including all United States District Judges in the Northern District of Alabama, all Circuit, District and Probate Judges in Jefferson County, and an array of other occupations, including couriers, secretaries, skilled and unskilled laborers, police officers, business executives, teachers and domestic servants not employed in private homes." (R. 8) Richards and Hill complain that "the net effect, dollarwise, of the occupational tax is an absurdity which allows, by way of example, physicians and attorneys earning hundreds of thousands of dollars a year to pay a license fee of $150.00 or less and avoid the occupational tax — which would otherwise be levied at more than ten times the amount of the license fee paid by these high income professionals" (R. 9) and conclude that "[t]he array of persons subject to the tax, on its face and in actual practice, is arbitrary and capricious, and discriminatory in a manner which defies logic

and . . . [t]he array of persons subject to the occupational tax, and the concomitant disparity in taxes paid by and between occupations in Jefferson County, Alabama which fall within and without the burden of the occupational tax render it irrational, unduly burdensome, and violative of the equal protection clause and the due process clause of the Fourteenth Amendment to the Constitution of the United States." (R. 9) Finally, they claim "the occupational tax is so arbitrary and irrational, as described herein, as to violate the due process clause of the Fourteenth Amendment to the Constitution of the United States, both on its face and in its application to both classes of taxpayers bringing this action." (R. 14.)

As the dissenting opinion of the Alabama Supreme Court in the case at bar makes clear, no claim remotely similar to these was presented to, heard by, or decided by either the trial court or the Alabama Supreme Court in *Bedingfield, supra.* (R. 231-235, 265-269).

ARGUMENT

(I) Scope of Review

Richards and Hill, who are not members of a suspect or quasi-suspect class, must establish that the exemption scheme attacked here as violative of the Fourteenth Amendment fails this Honorable Court's "minimum rationality" test for tax exemptions. *Hooper v. Bernalillo County Assessor,* 472 U.S. 612 (1985).

(II) Amplification of Reasons for Allowance of Writ

A. Petitioners' Federal Claims should Not Have Been Precluded

In *Martin v. Wilks,* 490 U.S. 755 (1989) this Honorable Court held that parties who are neither designated as parties nor served with process in prior litigations which proceed to judgments are not precluded from pursuing

subsequent, independent claims of unlawful discrimination under the United States Constitution. In *Martin, supra,* Justice Rehnquist, writing for a majority of this Honorable Court, stated the exact principle of law which applies to the claims of Richards and Hill: "Joinder as a party, rather than knowledge of a lawsuit and an opportunity to intervene, is the method by which potential parties are subject to the jurisdiction of the court and bound by a judgment or decree." 490 U.S., at 765.

In reaching this conclusion, Justice Brandeis' wisdom from *Chase National Bank v. Norwalk,* 291 U. S. 431 (1934), was invoked:

> "The law does not impose upon any person absolutely entitled to a hearing the burden of voluntary intervention in a suit to which he is a stranger... Unless duly summoned to appear in a legal proceeding, a person not a privy may rest assured that a judgment recovered therein will not affect his legal rights." *Id.,* at 441.

This appears elementary, particularly in a state like Alabama, which has adopted rules of civil procedure which are virtually a mirror image of the Federal Rules of Civil Procedure. Yet, this fundamental right of any litigant was trammelled by the logic of the Alabama Supreme Court in the case at bar.

Bedingfield, supra, was not a class action. The *Bedingfield* plaintiffs did not purport to represent anyone but themselves, and they neither presented nor had decided any federal constitutional claims. Indeed, the *Bedingfield* action was not only a state law test of the legality of the occupational taxing ordinance and its enabling legislation, but was also filed and decided before collection of the tax began. If Richards and Hill had tried to intervene in *Bedingfield* to protest its exemption scheme, they would have lacked standing. It would have been impossible for

them to complain about exemptions when no one – themselves included – was paying the tax.

Simply stated, a majority of the Alabama Supreme Court chose to ignore the legal rights of Richards and Hill to have their day in court upon the irrationality of the occupational tax's exemption scheme, preferring to analyze their effort so to do as if they were privies of the *Bedingfield* plaintiffs, and as if the *Bedingfield* plaintiffs had presented federal constitutional claims which had been decided adversely by the Alabama trial and appellate courts. The record on appeal refutes that analysis. It invites application of *Martin, supra*, and its admonitions to parties like Jefferson County to invoke joinder of parties and claims like this one in the first action if they wish to preclude subsequent parties with wholly separate claims from being heard.

B. The Irrational Exemption Scheme In Issue Here Is Unconstitutional

The Equal Protection Clause of the Fourteenth Amendment commands that no State shall deny to any person within its jurisdiction the equal protection of the laws. *Nordlinger v. Hahn*, 505 U. S. 1 (1992). And while the Equal Protection Clause does not forbid reasonable classifications, it does keep governmental decisionmakers from treating differently persons who are in all relevant respects alike. *F. S. Guano Co. v. Virginia*, 253 U. S. 412, 415 (1920), *Plyler v. Doe*, 457 U. S. 202 (1982). And even where – as here – persons discriminated against do not fall in a suspect or quasi-suspect classification, the Equal Protection Clause forbids irrational means to serve legitimate ends. *Cleburne v. Cleburne Living Center, Inc.*, 473 U. S. 432, 442 (1985).

This Honorable Court summarized application of the Fourteenth Amendment to the case at bar in the *F. S. Guano* case, *supra*:

> But the classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike."
>
> 253 U. S., at 412

This Court's rationality test specifically applies to tax exemption schemes. *Hooper v. Bernalillo County Assessor*, 472 U. S. 612 (1985).

By this petition, we invite this Honorable Court to revisit its decisions forbidding discriminations arbitrarily and irrationally imposed upon Vietnam war veterans who are newcomers to a state, rather than their more tenured brethren, *Hooper, supra*, upon recent real property purchasers rather than those who have managed to hold onto real property longer, *Allegheny Pittsburgh Coal Company, Inc. v. County Commission of Webster County, West Virginia*, 488 U. S. 336 (1989), upon disabled group home residents, rather than their better advantaged neighbors, *Cleburne, supra*, upon foreign corporations rather than their domestic counterparts, *Metropolitan Life Insurance Co. v. Ward*, 470 U. S. 869 (1984), *WHHY, Inc. v. Borough of Glassboro*, 393 U. S. 117 (1968), and upon recently arriving Alaskans seeking state oil reserve dividend distributions rather than their neighbors of longstanding vintage, *Zobel v. Williams*, 457 U. S. 55 (1982), and to then decide that the convoluted, cockamamie exemption scheme which is Jefferson County's cannot stand. It is an exemption scheme which completely *exempts* a bizarre collection of persons who happen to be employed by or as:

> utility companies; freight lines and equipment companies; electric companies; gas companies; railroads; telephone companies; telegraph com-

panies; express companies; financial institutions; insurance companies; abstract companies; acetylene gas and carbide manufacturers; adding machine, calculating machine and comptrometer businesses; advertising companies; air conditioning plant and equipment businesses; amusement parks; architects; attorneys; auctioneers; automobile dealers; automobile accessory dealers; automobile garages and shops; automobile storage garages; tire retreading shops; barbers; baseball parks; battery shops; beauty parlors; bicycle and motorcycle dealers; blueprint makers; bond makers; bottlers; bowling alleys; iron, railway supply, furnace supply and mining supply brokers and agents; broom, brush and mop manufacturers; cereal and soft drink retailers and wholesalers; certified public accountants; cigar, cigarette and cheroot retailers and wholesalers; circus operators; cleaning and pressing establishments; coal and coke dealers; coffin and casket manufacturers, dealers and agents; collection agencies; commission merchants or merchandise brokers; concert and musical entertainers; persons engaged in discounting notes, mortgages and conditional sales contracts; construction companies or contractors; cotton buyers; cotton compress operators; millers; persons operating cotton warehouses; credit agency personnel; persons operating creosoting businesses; delicatessen shops; dentists; detectives; film developers and printers; directory printers; refrigerator dealers; embalmers; engineers; owners and operators of fertilizer factories; damaged and close out goods salesmen; fireworks dealers; fortunetellers; palmists, clairvoyants, astrologers, phrenologists and crystal gazers; fruit dealers; gasoline station and pump operators; glass salesmen; golf course operators; hat cleaners; fur dealers; horse, ro-

deo, dog and pony show operators; horse and mule dealers; ice cream manufacturers; innkeepers; junk dealers; launderers; sleight-of-hand artists; lightning rod installers; lumber dealers and jobbers; lumberyard operators; machinery repair shops; manicurists; hairdressers; uphosterers; doctors, chemists, bacteriologists, and roentgenologists; persons engaged in the photocopy business; miners; monument and tombstone sellers; motion picture operators; oculists, optometrists and opticians; osteopaths and chiropractors; operators of packing houses and cold storage plants; pawnbrokers; peddlers and itinerant vendors; photographers; musical instrument salesmen; pig iron storage operators; pistor and knife dealers; playing card salesmen; plumbers, steamfitters and tin shop operators; pool halls, owners of racetracks and athletic fields; radio salesmen; real estate brokers and agents; restaurant, cafe and cafeteria operators; roadhouses, nightclubs and public dance halls; sandwich shops, barbecue stands, hamburger and hot dog stands; sawmills; scientists naturopaths and chiropodists; sewing machine salesmen; shooting gallery operators; shotgun and rifle dealers; skating rink operators; soliciting brokers; stock and bond brokers; street fair and carnival operators; syrum and sugar factory operators; theater, vaudeville and variety show operators; ticket scalpers; tourist camp operators; tractor, road machinery and trailer dealers; trading stamp merchants; freight carriers; transient dealers, vendors and peddlers; turpentine stillers; vending machine operators; veterinarians; warehouse operators; wax factory operators and waste grease and animal by-product purchasers and receivers (See Code of Alabama 1975, Legislative Manuscript Volume 6, Title 40, Chapter 12 and Ordinance 1120 at R. 33),

yet *taxes* average wage earners, laborers and all other persons who are not by other laws required to pay paltry license fees (five dollars for manicurists, twenty five dollars for neurosurgeons). We respectfully submit that it is impossible for Jefferson County or the State of Alabama to articulate a rational basis for exempting doctors and lightning rod installers, dentists and fortune tellers, attorneys and crystal ball gazers, and neurosurgeons and dog and pony show operators, to name but a few, from a substantial occupational tax while imposing the same tax on working stiffs like Richards and Hill. Moreover, Hill asserts that, as a domestic servant working in commercial buildings, she does the exact same sweeping and mopping that her colleagues who are domestic servants in private homes do (R. 386), yet she pays that tax while they enjoy complete exemption.

This exemption scheme could not be more irrational or arbitrary if it also exempted left handed men with freckles and green eyed women who refuse to eat broccoli. It goes far beyond the irrationality bounds this Honorable Court declared to be the line of demarcation between constitutional and unconstitutional classification in *Hooper, Allegheny Pittsburgh, Cleburne, Metropolitan Life,* and *WHHY, supra.*

CONCLUSION

Important federal constitutional claims arising from a patently irrational and arbitrary exemption scheme, never before reviewed or decided, will be effectively precluded forever unless this Honorable Court grants the writ, reverses the Supreme Court of Alabama, and allows Hill and Richards a day in court.

Wherefore, Petitioners request that their Petition be granted, that the decision of the Alabama Supreme

Court be reversed, and that the case be remanded for trial.

Respectfully submitted,

/s/ William J. Baxley

William J. Baxley

/s/ Joel E. Dillard

Joel E. Dillard
Attorneys for Petitioners
BAXLEY, DILLARD,
DAUPHIN & McKNIGHT
2000 Sixteenth Avenue South
Birmingham, Alabama 35205
(205) 939-0995

APPENDIX

A-1

SUPREME COURT OF ALABAMA

OCTOBER TERM, 1994-95

1930255

Jefferson County and the Birmingham-Jefferson Civic Center Authority

v.

Jason Richards, et al.

Appeal from Jefferson Circuit Court
(CV-92-3191)

ALMON, JUSTICE.

This appeal by permission is from the denial of a summary judgment in a declaratory judgment action brought on behalf of two classes of taxpayers against Jefferson County. The taxpayers sought to have Act 406, 1967 Ala. Acts, and Jefferson County Ordinance 1120, adopted in 1987, declared unconstitutional. Act 406 authorizes the Jefferson County Commission to levy a county occupational tax on all persons who earn wages in the County and who are not required to pay the state business license tax. Ordinance 1120 levies the county occupational tax at the rate of .005 (½ of 1%) on all eligible income earned in the county, exempting persons who pay the state business license tax and domestic servants employed in private homes. The complaint was filed by two classes of taxpayers: the "Foley-Dykes" class, which represents all Federal employees subject to the tax, and the "Richards-Hill" class, which represents all non-Federal employees subject to the tax. The complaint alleges that Act 406 and Ordinance 1120 violate the equal protection and due

process provisions of the Federal and State constitutions, and, with regard to the class of Federal employees only, the Buck Act, 4 U.S.C. § 111 et seq. The plaintiffs sought that the Act and the ordinance are made unconstitutional by what they call the arbitrary and irrational character of the exemptions. The Birmingham-Jefferson Civic Center Authority ("BJCC") was allowed to intervene, asserting as its interest $10 million per year of occupational tax proceeds that have been pledged to the BJCC for a 20-year period to repay BJCC special tax bonds that are not outstanding in the principal amount of over $123 million.

The County moved for a summary judgment, contending that all of the claims, except for the Federal employees' Buck Act claim, are barred by the doctrine of *res judicata*, based on the action that was the subject of this Court's opinion in *Bedingfield v. Jefferson County*, 527 So. 2d 1270 (Ala. 1988). The trial court entered a summary judgment for the County on all State constitutional claims, but denied the motion for summary judgment with regard to the Federal constitutional and statutory claims, stating:

> "In *Bedingfield v. Jefferson County*, 527 So. 2d 1270 (Ala. 1988), neither the trial court nor the Alabama Supreme Court determined whether Alabama Act No. 406 (Alabama Legislature 1967), authorizing the tax in question, or Jefferson County Ordinance No. 1120 (Jefferson County Commission 1987), imposing the tax in question, violates the equal protection clause of the United States Constitution by creating an unreasonable, unjust and improper classification of citizens subject to the tax, while exempting certain citizens from said tax in an arbitrary, irrational and unjust manner."

Pursuant to Rule 5, Ala. R. App. P., we granted the County permission to appeal the denial of the summary judgment. The issue before us is whether the trial court correctly held that the Federal constitutional claims are not barred by the doctrine of *res judicata* and thus correctly denied the summary judgment on these claims.

The doctrine of *res judicata* is a well-established principle of law:

> "The elements of res judicata, or claim preclusion, are (1) a prior judgment on the merits, (2) rendered by a court of competent jurisdiction, (3) with substantial identity of the parties, and (4) with the same cause of action presented in both suits. *Hughes v. Allenstein*, 514 So. 2d 858, 860 (Ala. 1987)."

Dairyland Insurance co. v. Jackson, 566 So. 2d 723, 725 (Ala. 1990).

> "If those four elements are present, any claim that was or could have been adjudicated in the prior action is barred from further litigation."

Id.; Crutcher v. Wynn, 591 So. 2d 453, 454 (Ala. 1991); *Ex parte McCracken*, 576 So. 2d 664, 665 (Ala. 1991); *Wood v. Tricon Metals & Services, Inc.*, 548 So. 2d 138, 140 (Ala. 1989); *Trimble v. Bramco Products, Inc.*, 351 So. 2d 1357 (Ala. 1977).

> "In general a judgment is res judicata not only as to all matters litigated and decided by it, but as to all relevant issues which could have been but were not raised and litigated in the suit."

Heiser v. Woodruff, 327 U.S. 726, 735 (1946) (citations omitted).

The appeal in Bedingfield arose from two complaints that were consolidated in a single action. One complaint

was filed by Hoyt Bedingfield, Jr., individually as a taxpayer, and also in his capacity as acting director of finance of the City of Birmingham and by the City of Birmingham. The Bedingfield/Birmingham complaint requested a judgment declaring

> "that ordinance No. 1120 adopted by the Jefferson County Commission is void and invalid, and if necessary, that Act No. 406 passed by the Alabama Legislature in 1967 and approved by the Governor on September 7, 1967, is void and invalid to the extent that it supports any comprehensive occupational tax on all persons working in Jefferson County."

Among the grounds alleged in that complaint were that "Act 406 is a violation of the equal protection requirements and provisions of the federal and state constitution,' and that "Act 406 is vague and ambiguous and therefore is a violation of the due process requirements of the state and federal constitution."

The second complaint sought declaratory and injunctive relief "against the action of the Jefferson County Commission levying an occupational tax on employees of Jefferson County." It was filed by three persons "in their individual capacity" as "employees within Jefferson County." In addition to several other allegations of violations of due process and equal protection principles, the complaint alleged that the tax

> "constitutes a denial of equal protection in violation of the Fourteenth Amendment of the United States Constitution. *Said Act exempts professional occupations required by State law to be licensed but does not exempt other professional and nonprofessional occupations.*"

(Emphasis added.) This allegation is the substance of the allegations made in the complaint now before the Court.

The complaint that is the subject of this appeal asks the circuit court to "declare the occupational tax unconstitutional, as depriving plaintiffs of due process of law and equal protection of the laws" guaranteed under the United States and Alabama Constitutions. The same cause of action was presented in both actions. Both were actions for declaratory judgments challenging the constitutionality of the Jefferson County occupational tax. Both complaints alleged violations of the equal protection and due process provisions of the State and Federal constitutions. The appellate briefs in *Bedingfield* argued an equal protection issue regarding the fact that Act No. 406 applied only to counties with a population of 500,000 or more. *Bedingfield* was decided, both by the circuit court and by this Court, on other State constitutional grounds, but the Federal and State equal protection and due process claims were pleaded, and it is at least true that they "could have been adjudicated." *Dairyland Ins. Co. v. Jackson*, 566 So. 2d 723, 725 (Ala. 1990). Furthermore, they arguably were adjudicated, because they were grounds stated as a basis for relief, and a final judgment denying relief was affirmed.

"*Res judicata* applies not only to the precise legal theory presented in the prior case, but to all legal theories and claims arising out of the same nucleus of operative fact." *NAACP v. Hunt*, 891 F. 2d 1555, 1561 (11th Cir. 1990) (citations omitted).

> "'[A] party . . . is not at liberty to split up his demand and prosecute it by piecemeal, or present only a portion of the grounds on which special relief is sought, and leave the rest to be presented in a second suit, if the first fail. There would be no end to litigation if such a practice were permissible.' *Baltimore Steamship Company v. Vernon Philips*, 274 U.S. 316 [47 S.Ct. 600, 71 L.Ed.2d 1069] (1926)."

Century 21 Preferred Properties, Inc. v. Alabama Real Estate Comm'n, 401 So. 2d 764, 768 (Ala. 1981) (per Jones, J., with three Justices concurring and two Justices concurring in the result).

The only other element of *res judicata* that is at issue is "substantial identity of the parties," *see Dairyland, supra.*

> "The second set of persons whom *res judicata* applies is composed of those persons who are or were in privity with the parties to the original suit. . . . Privity is defined as 'a relationship between one who is a party of record and a nonparty that is sufficiently close so a judgment for or against the party should bind or protect the nonparty.' . . . Privity exists where the nonparty's interests were represented adequately by the party in the original suit. . . . Privity also exists where a party to the original suit is 'so closely aligned to a nonparty's interest as to be his virtual representative.' *United Merchants & Mfrs., Inc. v. Sanders*, 508 So. 2d 689, 692 (Ala. 1987)."

NAACP v. Hunt, supra, at 1560-61 (citations omitted). *See also Century 21, supra.* The taxpayers in the *Bedingfield* action adequately represented the interests of the taxpayers here, and the respective taxpayers' interests are not only closely aligned — they are essentially identical. The "substantial identity of the parties" element of *res judicata* is met here.

The wisdom of disallowing successive attacks on the county tax on grounds that could have been pursued and adjudicated in the initial challenge is demonstrated by the BJCC's motion to intervene, which recites that it issued two series of bonds in 1989 to expand and improve the civic center. The motion continues:

> "[P]ursuant to that certain Pledge and Appropriation Agreement between the Defendant Jefferson County and the intervenor, said Defendant appropriated, pledged and agreed to pay a portion of the proceeds of the Occupational Tax [at] issue in this matter to the BJCC for repayment of the Series 1989 and Series 1989B Capital Outlay Special Tax Bonds issued by the BJCC in twenty (20) annual payments of $10,000,000.00 beginning in the year 1989 and ending in the year 2008."

In 1989, the county and the Authority, in pledging the occupational tax revenue and issuing the bonds, could have relied on *Bedingfield* as authoritatively establishing that the county occupational tax was not unconstitutional for the reasons asserted by the *Bedingfield* plaintiffs. To allow a challenge now that was pleaded and could have been adjudicated in *Bedingfield* would not only violate the *res judicata* principles discussed above, but would also improperly interfere with the operations of the county and the BJCC and undermine the security of the bonds, to the detriment of the bondholders.

For the foregoing reasons, we conclude that the circuit court incorrectly held that Bedingfield v. Jefferson County, 527 So. 2d 1270 (Ala. 1988), did not, by the operation of the doctrine of res judicata, bar this action.

REVERSED AND REMANDED.

Shores, Kennedy, Cook, and Butts,* JJ., concur.

Maddox, J., dissents.

*Although Justice Butts was not a member of this Court when this case was orally argued, he has listened to the tape of oral argument and has studied the record.

MADDOX, JUSTICE (dissenting).

The elements of the doctrine of res judicata have been precisely set out by this Court in *Wheeler v. First Alabama Bank of Birmingham,* 364 So. 2d 1190, 1199 (Ala. 1978), where this Court said:

> "The elements of res judicata are as follows: (1) prior judgment rendered by court of competent jurisdiction; (2) prior judgment rendered on the merits; (3) parties to both suits substantially identical; and (4) same cause of action present in both suits."

See also *Dominey v. Mathison,* 292 Ala. 293, 293 So. 2d 471 (1974), and my dissenting opinion in *Century 21 Preferred Properties, Inc. v. Alabama Real Estate Comm'n,* 401 So. 2d 764, 770 (Ala. 1981). Even a cursory examination of this doctrine as applied to the facts of this case reveals that it has no application to this case. In this dissent, I will make a brief statement of the facts and will state the principle of law I think should be applied to sustain the trial court's order.

The majority holds that these plaintiffs are bound by the judgment rendered in *Bedingfield v. Jefferson County,* 527 So. 2d 1270 (Ala. 1988), where the City of Birmingham challenged the constitutionality of Act No. 406 and the validity of a county ordinance establishing an occupational tax.

The trial judge, in denying the defendant's motion for a summary judgment in this case (that motion being based on the ground that the action was barred by the doctrine of *res judicata),* issued an order in which he concluded, in part, that "[i]n *Bedingfield v. Jefferson County,* 527 So. 2d 1270 (Ala. 1988), neither the trial court nor [this Court] determined whether Act No. 406 (Alabama Legislature 1967), authorizing the tax in question, or Jefferson County Ordinance No. 1120 (Jefferson County Commission 1987), imposing the tax in question, violates the equal protection clause of the United States Constitution by creating an unreasonable, unjust and improper classification of citizens subject to the tax, while exempting certain citizens from said tax in an arbitrary, irrational and unjust manner." The trial judge also determined that "[i]n *Bedingfield v. Jefferson County,* 527 So. 2d 1270 (Ala. 1988), neither the trial court nor [this Court] determined whether the tax in question violates the Buck Act (4 U.S.C. § 111) as it pertains to federal employees." I agree with the trial court on both points.

In concluding that the trial judge was correct, I have examined the pleadings in *Bedingfield* and the order entered by the trial judge in that case and I have studied the opinion issued by this Court in *Bedingfield,* a case in which I participated. I have also carefully considered the argument of Jefferson County that "the claims in this case arise from the same nucleus of operative fact as the claims made in *Bedingfield* and [that] because the evidence necessary to support both claims is *identical,* it is axiomatic that the fourth element of *res judicata* is satisfied," and I have given careful consideration to the views of my colleagues expressed in the majority opinion, and my only comment is that if the "same cause of action presented in both suits" element of the res judicata doctrine is so easily satisfied, then it could be extended ad infinitum and would establish a precedent that could close the courthouse doors to other plaintiffs in other cases who might find themselves faced with the rule of law herein established. I think that the Court is establishing a bad precedent.

My opinion that Bedingfield does not bar the claims presented in this case is the same as that of the trial

judge: that this Court, in Bedingfield, did not adjudicate these claims, or any claim similar to them. The West Publishing Company synopsis in Bedingfield succinctly states what that case was about, and the issue it adjudicated:

> "City challenged constitutionality of county ordinance establishing occupational tax. The Circuit Court, Jefferson County, Braxton L. Kittrell, Jr., J., upheld ordinance, and appeal was taken. The Supreme Court, Beatty, J., held that: (1) statute authorized county to levy occupational tax; (2) statute was general rather than local legislation; and (3) statute authorizing levy of tax provided for collection of such tax."

527 So. 2d at 1270. Where in the Bedingfield opinion is there an adjudication of the federal constitutional claims the plaintiffs raise in the instant action? Neither the order of the trial judge nor the opinion of this Court contains a single reference to whether the Act and the county ordinance violate any provision of the Federal Constitution.

It is true that the plaintiffs, in *Bedingfield*, did allege in their complaint that "[i]f Ordinance No. 1120 were authorized by Act 406, then Act 406 is unconstitutional based upon any one of the following grounds: . . . . B. Act 406 is a violation of the equal protection requirements and provisions of the federal and state constitutions." But I ask this question: Is the mere making of such an allegation in a complaint sufficient to satisfy the "same cause of action presented in both suits" element of the res judicata doctrine? I think not, especially when the adjudicatory orders of the trial court, and of this Court, affirmatively show that the issues in *Bedingfield* involved whether Act No. 406 was a general law or was a local law because the Act was applicable oniy to counties with a population of 500,000 or more.

But even assuming that the federal equal protection claim was presented and adjudicated in *Bedingfield*, the plaintiffs in this case are attacking the *exemption scheme* contained in Ordinance No. 1120, which exempts a number of occupations from the occupational tax.[1] Clearly,

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[1] Ordinance 1120 taxes the gross receipts of any person who engages in or follows any "vocation, occupation, calling and profession," but exempts from its definition of "vocation, occupation, calling and profession" the following: utility companies; freight lines and equipment companies; electric companies; gas companies; railroads; telephone companies; telegraph companies; express companies; financial institutions; insurance companies; abstract companies; acetylene gas and carbide manufacturers; adding machine, calculating machine, and comptometer businesses; advertising companies; air condition plant and equipment businesses; amusement parks; architects; attorneys; auctioneers; automobile dealers; automobile accessory dealers; automobile garages and shops; automobile storage garages; tire retreading shops; barbers; baseball parks; battery shops; beauty parlors; bicycle and motorcycle dealers; blueprint makers; bond makers; bottlers; bowling alleys; iron, railway supply, furnace supply, and mining supply brokers and agents; broom, brush, and mop manufacturers; cereal and soft drink retailers and wholesalers; certified public accountants; cigar, cigarette, and cherott retailers and wholesalers; circus operators; cleaning and pressing establishments; coal and coke dealers; coffin and casket manufacturers, dealers, and agents; collection agencies; commission merchants or merchandise brokers; concert and musical entertainers; persons engaged in discounting notes, mortgages, and conditional sales contracts; construction companies or contractors; cotton buyers; cotton compress operators; millers; persons operating cotton warehouses; credit agency personnel; persons operating creosoting businesses; delicatessen shops; dentists; detectives; film developers and printers; directory printers; refrigerator dealers; embalmers; engineers; domestic servants employed in private homes; owners and operators of fertilizer factories; damaged and close out goods salesmen; fireworks dealers; fortunetellers, palmists, clairvoyants, astrologers, phrenologists and crystal gazers; fruit dealers; gasoline station and pump operators; glass salesmen; golf course operators; hat cleaners; fur dealers; horse, rodeo, and dog and pony show operators; horse and mule dealers; ice cream manufacturers; innkeepers; junk dealers; launder-

that claim was not presented or adjudicated in *Bedingfield*.

Jefferson County and BJCC argue that even if the plaintiffs' claims were not previously raised or adjudicated in the *Bedingfield* case, the claims are barred, nevertheless, because "any claim that was or could have been adjudicated in the prior action is barred from further litigation." *Dairyland Insurance Co. v. Jackson*, 566 So. 2d 723, 725 (Ala. 1990). Stated differently, the County and BJCC contend that the theory on which the plaintiffs bring this action could have been asserted in the

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ers; sleight-of-hand artists; lighting rod installers; lumber dealers and jobbers; lumberyard operators; machinery repair shops, manicurists; hairdressers; upholsterers; doctors, chemists, bacteriologists, and roentgenologists; persons engaged in the photocopy business; miners; monument and tombstone sellers; motion picture operators; oculists, optometrists, and opticians; osteopaths and chiropractors; operators of packing houses and cold storage plants; pawnbrokers; peddlers and itinerant vendors; photographers; musical instrument salesmen; pig iron storage operators; pistol and knife dealers; playing card salesmen; plumbers, steamfitters and tin shop operators; operators of pool halls, owners of racetracks and athletic fields; radio salesmen; real estate brokers and agents; restaurant, cafe, and cafeteria operators; operators of roadhouses, nightclubs, and public dance halls; sandwich shops, barbecue stands, hamburger and hot dog stands; sawmills; scientists, naturopaths and chiropodists; sewing machine salesmen; shooting gallery operators; shotgun and rifle dealers; skating rink operators; soliciting brokers; stock and bond brokers; street fair and carnival operators; syrup and sugar factory operators; theater, vaudeville, and variety show operators; ticket scalpers; tourist camp operators; tractor, road machinery, and trailer dealers; trading stamp merchants; freight carriers; transient dealers, vendors, and peddlers; turpentine stillers; vending machine operators; veterinarians; warehouse operators; wax factory operators and waste grease and animal by-product purchasers and receivers. See Ordinance 1120, § 1(B) and § 2; §§ 40-12-40 through 40-12-180, § 40-12-50, § 40-12-52 through 40-12-55, §§ 40-12-57 through 40-12-60, § 40-16-6, and § 27-4-9, Ala. Code 1975.

Bedingfield case and that this action is therefore due to be dismissed.

The test for determining whether two cases involve substantially the same cause of action is whether the same evidence would support a recovery in both actions. *Barber v. Fields*, 624 So. 2d 532, 536 (Ala. 1993); *Vaughan v. Barr*, 600 So. 2d 994, 996 (Ala. 1992); *Waters v. Jolly*, 582 So. 2d 1048, 1053 (Ala. 1991); *Garris v. South Alabama Production Credit Ass'n*, 537 So. 2d 911, 914 (Ala. 1989); *Dominex, Inc. v. Key*, 456 So. 2d 1047, 1054-55 (Ala. 1984); *Wheeler v. First Alabama Bank of Birmingham*, 364 So. 2d 1190, 1200 (Ala. 1978). In *Barber v. Fields*, this Court reversed a summary judgment entered on *res judicata* grounds where both the former and the latter cases involved the city water service but the claims in the latter case, which pertained to the removal of water meters, was not litigated in the former case, which involved a claim that the city's refusal to extend water service to the plaintiff's land was a violation of her right to equal protection of the laws. *Barber*, 624 So. 2d at 536. In *Vaughan v. Barr*, this Court reversed a judgment entered on *res judicata* grounds where both the former case and the latter case involved the same land and landowners but the former case, which involved a boundary dispute, was "based on different theories" and "require[d] different evidence" from that required in the latter case, which involved a claim of an easement by necessity. *Vaughan*, 600 So. 2d at 996.

Although this case and the *Bedingfield* case involve Act 406 and Ordinance 1120, the similarity there ends, because the evidence necessary to prove the claims asserted in this case, and the legal arguments in support of those claims, will be very different from those in *Bedingfield*. Here, the plaintiffs allege that the exemptions to the tax violate their equal protection rights under the Federal Constitution. The Federal employees are permitted to

maintain their Buck Act claims. How are their claims different from those of the non-Federal employees who claim equal protection violations? In each case, the plaintiffs apparently are citizens of the United States who are claiming protection of their rights under Federal constitutional and statutory provisions. The foundation of their claims, the Federal Constitution, is the same.

I have carefully examined the arguments of Jefferson County and those of BJCC, and I recognize the importance of this case to those entities, but I think the law is against them. The plaintiffs' claims in this case are just different from those presented in *Bedingfield*, and the evidence necessary to prove their claims will be very different from the evidence used to prove the claims asserted in *Bedingfield*. In fact, the issues presented in *Bedingfield* were largely legal issues relating to the classification between counties of 500,000 or more in population and counties of less than 500,000 in population and to the question of whether Act 406 violated the Alabama Constitution, and there is no mention in *Bedingfield* of any Federal constitutional claims adjudicated in either the trial court or this Court.

Based on the foregoing, I believe that the fourth element of the doctrine of *res judicata* as set forth in *Dairyland Insurance Co. v. Jackson*, 566 So. 2d 723, 725 (Ala. 1990) ("the same cause of action presented in both suits"), is not present in this case; I believe that the trial judge correct concluded that the plaintiffs could maintain their action.

SUPREME COURT OF ALABAMA

IMPORTANT INFORMATION REGARDING SECOND COPY OF RECORD ON APPEAL AND EXHIBITS

RETURN OF SECOND COPY OF RECORD ON APPEAL:

In the event a second copy of the record has been filed pursuant to Rule 30(g), Alabama Rules of Appellate Procedure, any party or attorney desiring to receive the second copy of the record should make a written request to the Clerk of the Supreme Court within 30 days from date of decision. Otherwise, the second copy of the record will be destroyed.

RETURN OF EXHIBITS:

Any party or attorney may make a written request to the Clerk of the Supreme Court for return of exhibits prior to the expiration of the periods set out in the records retention schedule of the Supreme Court of Alabama as indicated below.

DESTRUCTION OF EXHIBITS:

Pursuant to the Records Retention Schedule of this Court, all original exhibits contained in separate volumes of the record on appeal, or sent to the Court under separate cover (including charts, maps, depositions, and physical exhibits) will be destroyed as follows:

At the end of one year after decision	—	Destroy all exhibits in affirmed cases.
At the end of two years after decision	—	Destroy all exhibits in reversed cases.

IN THE SUPREME COURT OF ALABAMA
June 9, 1995

1930255

Jefferson County and the Birmingham-Jefferson Civic Center Authority v. Jason Richards, et al. (Jefferson: CV-92-3191)

NOTICE

The application for rehearing filed in this cause is overruled. No opinion written on rehearing.

ALMON, J. — Shores, Kennedy, Cook and Butts, JJ., concur;

Maddox, J., dissents

I, Robert G. Esdale, as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.
Witness my hand this 9 day of Jun, 1995.

/s/ Robert G. Esdale

Robert G. Esdale
Clerk, Supreme Court
of Alabama

IN THE CIRCUIT COURT OF
JEFFERSON COUNTY, ALABAMA

JASON RICHARDS and FANNIE HILL, individually and on behalf of all employees of the United States of America, who are subject to the Jefferson County, Alabama occupational tax which is more particularly described by this complaint; and GEORGE DAVID DYKES and JOAN FOLEY DYKES, individually and on behalf of all employees of the United States who are subject to the Jefferson County, Alabama occupational tax which is more particularly described by this complaint;	*	CIVIL ACTION NO. CV-92-03191
PLAINTIFFS,	*	
VS.	*	
JEFFERSON COUNTY, a political subdivision of the State of Alabama, and RANDY GODEKE, individually and in his official capacity as Director of the Department of Revenue for Jefferson County, Alabama, and as successor in office to C. H. Ritchie, former Director of the Department of Revenue for Jefferson County, Alabama	*	
DEFENDANTS.	*	

ORDER

After a consideration of the law, statutes, legal evidence and argument of counsel for the parties the Court finds that Defendant is entitled to summary judgment as to certain claims raised by the Plaintiffs due to the doctrine of res judicata, but that certain of Plaintiffs' claims should not be dismissed. The Court FINDS as follows:

1. In *Beddingfield v. Jefferson County*, 527 So. 2d 1270 (Ala. 1988), neither the trial court nor the Alabama Supreme Court determined whether Alabama Act No. 406 (Alabama Legislature 1967), authorizing the tax in question, or Jefferson County Ordinance No. 1120 (Jefferson County Commission 1987), imposing the tax in question, violates the equal protection clause of the United States Constitution by creating an unreasonable, unjust and improper classification of citizens subject to the tax, while exempting certain citizens from said tax in an arbitrary, irrational and unjust manner.

2. In *Beddingfield v. Jefferson County*, 527 So. 2d 1270 (Ala. 1988), neither the trial court nor the Alabama Supreme Court determined whether the tax in question violates the Buck Act (4 U.S.C. §111) as it pertains to federal employees.

3. The trial court in *Beddingfield v. Jefferson County*, 527 So. 2d 1270 (Ala. 1988), did in fact consider the constitutionality of Alabama Act No. 406 and Jefferson County Ordinance No. 1120 as it relates to the *Constitution of Alabama* of 1901 and found "nothing" in said Act to be "repugnant" to such a degree as to invalidate the Act, and further did not find Ordinance No. 1120 to be "invalid". *(Order* of Judge Braxton Kittrell, Specially Sitting, CV-87-504-465 and CV-87-504-469, Jefferson County, Alabama, December 11, 1987).

Thus the state constitutional issues in this matter have been previously adjudicated.

Accordingly, Summary Judgment is GRANTED in favor of Defendant, and against Plaintiffs as to Counts Three and Four of the Complaint based on the doctrine of res judicata. Summary Judgment is DENIED as to Counts One and Two.

Done and Ordered this 8th day of April, 1993.

/s/ John E. Rochester

JOHN E. ROCHESTER
CIRCUIT JUDGE
SPECIALLY SITTING

IN THE CIRCUIT COURT OF
JEFFERSON COUNTY, ALABAMA

JASON RICHARDS and FANNIE HILL, individually and on behalf of all employees, excluding employees of the United States of America, who are subject to the Jefferson County, Alabama occupational tax which is more particularly described by this complaint; and GEORGE DAVID DYKES and JOAN FOLEY DYKES, individually and on behalf of all employees of the United States who are subject to the Jefferson County, Alabama occupational tax which is more particularly described by this complaint;	*	CIVIL ACTION NO. CV9203191
Plaintiffs,	*	
vs.	*	
JEFFERSON COUNTY, a political subdivision of the State of Alabama, and RANDY GODEKE, individually and in his official capacity as Director of the Department of Revenue for Jefferson County, Alabama, and as successor in office to C. H. Ritchie, former Director of the Department of Revenue for Jefferson County, Alabama	*	
Defendants.	*	

COMPLAINT

Plaintiffs, by and through their undersigned counsel, complain and allege as follows:

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to Rule 57, Alabama Rules of Civil Procedure and 42 U.S.C. 1983, as this is a civil action arising under the laws and Constitution of the United States. This action involves a violation of federal law for which 42 U.S.C. 1983 provides a remedy, and to which Rule 37 of the Alabama Rules of Civil Procedure is applicable. A question of intergovernmental immunity arising under the Buck Act, 4 U.S.C. 101, et seq, is presented by Plaintiffs Dykes individually, and on behalf of all similarly situated federal employees. Venue lies in the Circuit Court of Jefferson County, Alabama, the tax challenged by this action being levied and collected by Jefferson County, Alabama, against and from plaintiffs, and similarly situated class members within Jefferson County, Alabama.

PARTIES

2. Plaintiff Jason Richards is a courier privately employed by a law firm in Jefferson County, Alabama, and is a resident citizen of Jefferson County, Alabama; Fannie Hill is a domestic servant privately employed in commercial building sin Jefferson County, Alabama, and is a resident citizen of Jefferson County, Alabama; they bring this action individually on their behalf, and in a representative capacity on behalf of all other employees in Jefferson County, Alabama, other than employees of the United States of America, who have been subject to the levy, collection and payment of taxes established by Jefferson County Ordinance 1120, commonly known as the Jefferson County Occupational Privilege Tax ("the occupa-

tional tax") since January 1, 1988. George David Dykes is a Reclamation Specialist employed by the United States of America in the Office of Surface Mining, Department of the Interior in Jefferson County, Alabama, and is a resident citizen of Jefferson County, Alabama; Joan Foley Dykes is a Registered Nurse employed by the United States of America in the Department of Veterans' Affairs in Jefferson County, Alabama, and is a resident citizen of Jefferson County, Alabama; they bring this action individually on their own behalf, and in a representative capacity on behalf of all other employees of the United States of America, who have been subject to the levy, collection and payment of the occupational tax since January 1, 1988. Plaintiffs Jason Richards, Fannie Hill, and Joan Foley Dykes have been required by their employers to pay the occupational tax at all times relevant to these proceedings, continuously since January 1, 1988, when the occupational tax became effective. Plaintiff George David Dykes was required by his employer to pay the occupational tax for approximately one year after enactment of the occupational tax, after which he refused to continue to do so, based upon the authorities cited herein.

CLASS ACTION AVERMENTS

3. This lawsuit is brought by plaintiffs as a class action, on their own behalf and on behalf of all others similarly situated, under the provisions of Rule 23(a) and Rule 23(b)(1) of the Alabama Rules of Civil Procedure for injunctive and declaratory relief, and for an order awarding members of the plaintiff classes compensatory damages in sums equal to the amounts of taxes illegally levied, collected and paid by them, and for relief incident and subordinate thereto, including costs and attorneys fees pursuant to 42 U.S.C. 1988, and such other authorities as shall be determined applicable to this action.

4. The classes represented by plaintiffs in this action, and of which plaintiffs themselves are members, consist of all persons subject to the occupational tax, both federal and non-federal employees, who have been subject to its levy, collection and payment since January 1, 1988, when the occupational tax became effective.

5. The exact number of members of the classes, as herein identified, is not known, but it is estimated that there are thousands of members of each class. The classes are so numerous that joinder of individual members herein is impracticable.

6. There are common questions of law and fact in the action that relate to and affect the rights of each member of the classes represented by the named plaintiffs and the relief sought is common to both classes, namely a declaration that the occupational tax is unconstitutional.

7. The claims of plaintiffs, who are representatives of the class herein are typical of the claims of the classes they represent, in that the claims of all members of the classes, including plaintiffs, depend on a showing of the unconstitutionality of the occupational tax in a manner which is beneficial to each. There is no conflict as between any individual named plaintiff and any other member of either class with respect to this action, or with respect to the relief sought herein. The Dykes Class of federal employees are beneficiaries of federal and state statutes which prohibit discrimination in a manner which is consistent with the general prohibition of discrimination applicable to the Richards/Hill Class of non-federal employees, and both classes are protected equally by the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States, and the state laws cited herein.

8. The named plaintiffs are the representative parties for their respective classes, and are able to, and will, fairly and adequately protect the interests of the classes they

represent. The attorneys for plaintiffs are experienced and capable in litigation in the field of constitutional, tax and civil rights claims, and have successfully represented claimants in other litigation of this nature.

ALLEGATIONS OF FACT

9. On or about January 1, 1988, Defendant Jefferson County levied and began collecting, and Plaintiffs and the classes they represent began involuntarily paying, the occupational tax, which was described by Defendant as a "license or privilege tax on natural persons engaged in any vocation, occupation, calling or profession who are not required by law to pay any license or privilege tax to the state or county." A copy of the occupational tax ordinance is attached to this complaint, and made a part hereof as Exhibit A.

10. The occupational tax is calculated as one-half of one percent of the gross earnings of plaintiffs and members of both classes, but is characterized by Defendant as a license or privilege tax, rather than an income tax. Specifically the taxing ordinance provides:

> It shall be unlawful for any person to engage in or follow any vocation occupation, calling or profession as defined in Section 1 within the County on and after the 1st day of January, 1988, without paying license fees to the County for the privilege of engaging in or following such vocation, occupation, calling or profession, which license fees shall be measured by one-half percent (1/2%) of the gross receipts of each such person.

11. The taxing ordinance also defines gross receipts and compensation, as follows:

> The words "gross receipts" and "compensation" shall have the same meaning, and both words

> shall mean and include the total gross amount of all salaries, wages, commissions, bonuses or other money payment of any kind, or any other considerations having monetary value, which a person receives from or is entitled to receive from or be given credit for by his employer for any work done or personal services rendered in any vocation, occupation, calling or profession, including any kind of deductions before "take home" pay is received; but the words "gross receipts" and compensation shall not mean or include amounts paid to traveling salesmen or other workers as allowance or reimbursement for traveling or other expenses incurred in the business of the employer, except to the extent of the excess of such amounts over such expenses actually incurred and accounted for the by employee to the employer.

12. The occupational tax carves out of its scope, by way of its definition of "vocation, occupation, calling and profession" a substantial array of persons, as follows:

> The words "vocation, occupation, calling and profession" shall mean the doing of any kind of work, the rendering of any kind of personal services, or the holding of any kind of position or job within Jefferson County, Alabama, by any clerk, laborer, tradesman, manager, official or other employee, including any non-resident of Jefferson County who is employed by any employer as defined in this section, where the relationship between the individual performing the services and the person for whom such services are rendered is, as to those, services, the legal relationship of employer and employee, including also a partner of a firm or an officer of a firm or corporation, if such partner or officer receives a salary for his personal services rendered in the business of such firm or corpora-

> tion, but they shall not mean or include domestic servants employed in private homes and shall not include businesses, professions or occupations for which license fees are required to be paid under any General License Code of the County or to the State of Alabama or the County by any of the following: Chapter 12, Article 2, Title 40; Sections 40-21-50, 40-21-52, 53, 54 and 55; 40-21-57, 58, 59 and 60; 40-16-6; and 27-4-9 of the Code of Ala. 1975, as amended.

and also includes within its ambit all federal employees represented here by Plaintiffs Dykes, as follows:

> The words "vocation, occupation, calling and profession" shall also mean and include the holding of any kind of office or position either by election or appointment, by any federal, state, county or city officer or employee where the services of such official or employee are rendered within Jefferson County, Alabama.

13. The occupational tax broadly defines "employer" to "mean and include any person, business, firm, corporation, partnership, association or any other kind of organization who or that employs any person in any vocation, occupation, calling or profession in Jefferson County, Alabama, within the meaning of subsection (B) of Section 1 of this Ordinance." (This subsection is set forth in full at paragraph 12 of this complaint). Defendant, by and through its Director of Revenue and County Attorney, has interpreted "employer" to include the United States of America, and "employee" to include all federal employees in Jefferson County, including all United States District Judges in the Northern District.

14. The occupational tax by its terms, and in actual practice, exempts from its levy, collection and payment businesses and vocations or occupations listed at Chapter 12, Article 2, Title 40, Code of Ala. 1975, as amended,

which range from attorneys, certified public accountants, dentists and physicians to blueprint makers, casket manufacturers, pig iron storage operators, lightning rod installers and snuff retailers, and it includes a specific exemption for domestic servants employed in private homes. By its terms and in actual practice, it taxes all federal employees, including all United States District Judges in the Northern District of Alabama, all Circuit, District and Probate Judges in Jefferson County, and an array of other occupations, including couriers, secretaries, skilled and unskilled laborers, police officers, business executives, teachers and domestic servants not employed in private homes.

15. The net effect, dollarwise, of the occupational tax, is an absurdity which allows, by way of example, physicians and attorneys earning hundreds of thousands of dollars a year to pay a license fee of $150.00 or less and avoid the occupational tax — which would be levied at more than ten times the amount of the license fee paid by these high income professionals. In all cases, the occupational tax imposes upon those citizens against whom it is levied and collected a percentage of income tax which is substantially more than the license fees paid by similarly situated persons exempted from its burden.

16. The occupational tax, on its face and in actual practice, is arbitrary and capricious, and discriminatory in a manner which defies logic and, insofar as federal employees are concerned, 4 U.S.C. 111. The array of persons subject to the occupational tax, when compared with the array of persons exempted from the tax, and the concomitant disparity in taxes paid by and between occupations in Jefferson County, Alabama which falls within and without the burden of the occupational tax, render it irrational, unduly burdensome, and violative of the equal protection clause and the due process clause of

Fourteenth Amendment to the Constitution of the United States.

17. The content, nature and characteristics of the employment of Plaintiffs Dykes, Richards and Hill, and all the members of the classes they represent, are neither reasonably, rationally or fairly different, nor professionally distinct, from the content, nature and characteristics of the employment of the above described persons exempt from the occupational tax, and the economic burden thrust upon them by Defendant, relative to those exempted, is substantial and absurd.

18. The irrationality and unconstitutionality of the occupational tax is well known to the Defendant's officers and agents responsible for its administration and collection, and has resulted in their adoption of a policy of further exemption from its levy and collection federal employees who refuse to pay it. This pay-if-you-wish policy is itself arbitrary and capricious, irrational, indicative of Defendant's callous disregard of the constitutional rights of other federal and private employees from whom the tax is collected, and demonstrative of Defendant's cognizance of the constitutional defects complained of herein.

19. Plaintiffs aver that unless Defendant is enjoined and restrained by the court from enforcing the occupational tax ordinance, they will suffer economic injury.

COUNT ONE
DYKES CLASS BUCK ACT CLAIMS
AND FEDERAL CONSTITUTIONAL CLAIMS

20. Plaintiffs Dykes, individually and on behalf of the above described class of employees of the United States which they represent, claim Defendants, a political subdivision of the State of Alabama and its Director of Revenue, acting by and through their County Attorney, and

such other administrative officers as have acted and continue to act in concert with them, were and are acting under color of a statute, ordinance, regulation, custom or usage of the State of Alabama in subjecting its citizens described herein to a deprivation of rights, privileges or immunities secured by the Constitution and laws of the United States, specifically 4 U.S.C. 111 and the due process and equal protection clauses of the Constitution of the United States.

21. The occupational tax violates the equal protection guaranties of the Fourteenth Amendment to the United States Constitution and 4 U.S.C. 111 by unreasonably and arbitrarily favoring the above described state, local and private employees who are exempted from its purview in the unequal manner described above while taxing the similarly situated federal employees represented by Plaintiffs Dykes as described herein.

22. The occupational tax has been previously challenged in this court on non-federal and other state law grounds, and, its measurement by a percentage of pay or compensation for personal service as described by 4 U.S.C. 111 notwithstanding, been declared to be a license or privilege tax rather than an income tax. *Bedingfield* v. *Jefferson County*, 527 So.2d 1270 (Ala. 1988). In the trial court in *Bedingfield, supra*, the plaintiff initially asserted that the occupational tax was, under state law, an illegal income tax; the trial court rejected that claim, and it was abandoned on appeal.

23. Plaintiffs Dykes and their similarly situated federal employee class members also claim the occupational tax is so arbitrary and irrational, as described herein, as to violate the due process clause of the Fourteenth Amendment to the Constitution of the United States, both on its face and in its application to both classes of taxpayers bringing this action.

COUNT TWO

RICHARDS/HILL CLASS FEDERAL CLAIMS

24. Plaintiffs Richards and Hill, individually and on behalf of the class of non-federal employees they represent, claim Defendants, a political subdivision of the State of Alabama, and its Revenue Commissioner, acting in concert with their County Attorney, and such other administrative officers as have acted and continue to act in concert with them, were and are acting under color of a statute, ordinance, regulation, custom or usage of the State of Alabama in subjecting or causing its citizens described herein to a deprivation of rights, privileges or immunities secured by the Constitution and laws of the United States, specifically the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

25. The occupational tax violates the equal protection clause of the Fourteenth Amendment to the Constitution of the United States by discriminating against Plaintiffs Richards and Hill, and the class of similarly situated non-federal employees they represent, a class against whom it has been and is now levied and collected, in a manner which is not only arbitrary and irrational, as described herein, but which also creates an unjust, unreasonable and improper classification of citizens subject to the tax. There is no legitimate difference between Plaintiffs Richards and Hill, and the class of non-federal employees they represent and the above described exempted employees which is related to any legitimate government object or purpose, and the arbitrariness and capriciousness of selection of the Richards/Hill class by Defendant to pay the occupational tax is clear upon the face of the taxing ordinance and in its implementation by Defendant. Persons engaged in the same businesses as Richards and Hill, and the members of the class they represent are granted exemption privileges by Defendant under em-

ployment conditions which are the same as those experienced by Richards, Hill and the Richards/Hill class, while the Richards/Hill class is contemporaneously, arbitrarily and unreasonably — in the context of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States — taxed.

26. The occupational tax has been previously challenged in the state courts on other state law grounds, and, measurement by a percentage of pay or compensation for personal service notwithstanding, been declared to be a license or privilege tax rather than an income tax. *Bedingfield v. Jefferson County*, 527 So.2d 1270 (Ala. 1988). In the trial court in *Bedingfield, supra*, the plaintiff initially asserted that the occupational tax was, under state law, an illegal income tax; the trial court rejected that claim, and it was abandoned on appeal. Additionally, these federal constitutional claims are joined in this action with federal Buck Act claims which present a related federal statutory question under federal law.

27. Plaintiffs Richards and Hill and their similarly situated non-federal employee class members also claim the occupational tax is so arbitrary and irrational, as described herein, as to violate the due process clause of the Fourteenth Amendment to the Constitution of the United States, both on its face and in its application to both classes of taxpayers bringing this action.

COUNT THREE

DYKES CLASS PENDENT STATE LAW CLAIMS

28. Plaintiff Dykes, individually and on behalf of the above described class of employees of the United States which they represent, claim the occupational tax violates Code of Ala. 1975, Section 40-18-3, which provides that the salaries, fees, commissions or other income of officers or agents of the United States or its agencies and

instrumentalities or its contractees, received from the United States or from its agencies and instrumentalities, shall be subject to income taxes levied by the state of Alabama as other income is taxed, but without discrimination, and only to the same extent and in the same manner as other income is taxed, insofar as the State of Alabama may be constitutionally or legally authorized to tax such income.

29. The Alabama Constitution prohibits cities and counties from collecting income taxes, hence Defendant's designation of the occupational tax as a license or privilege tax, despite its measurement by a percentage of gross income or gross receipts.

30. The occupational tax, as a license tax measured by a percentage of gross income or gross receipts, authorized by a general law of the State of Alabama, is nevertheless subject to the "without discrimination" prohibition of Code of Ala. 1975, Section 40-18-3, and that code section's requirement that it be collected "only to the same extent and in the same manner as other income is taxed." Plaintiffs Dykes and the class of federal employees they represent, based upon the above described allegations regarding persons exempted from paying the occupational tax, aver that they have been discriminated against and required to pay taxes to a different extent and in a different manner from their incomes in violation of Code of Ala. 40-18-3 and the due process and equal protection provisions of the Constitution of Alabama of 1901.

COUNT FOUR
RICHARDS/HILL CLASS PENDENT STATE CLAIMS

31. Plaintiffs Richards and Hill, individually and on behalf of the class of non-federal employees subject to the occupational tax which they represent, aver that the

occupational tax discriminates against non-federal employees, as described above, in a manner which violates the due process and equal protection provisions of the Constitution of Alabama of 1901.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court grant and award them the following relief:

A. That a hearing be set as soon as practicable after commencement of this action, under Rule 23(c)(1), Federal Rules of Civil Procedure, to determine by order whether this action is to be maintained as a class action, and whether certification should be conditional, and whether the Richards' and Dykes' classes should be certified as sub-classes pursuant to Rule 23(c)(4)(B), Alabama Rules of Civil Procedure.

B. That the Court declare the occupational tax unconstitutional, as depriving plaintiffs of due process of law and equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States, violative of intergovernmental immunity secured by 4 U.S.C. 111, violative of the due process and equal protection clauses of the Constitution of Alabama of 1901, and violative of Code of Ala. 1975, Section 40-18-3.

C. That the Court declare the occupational tax unconstitutional in its application to plaintiffs, depriving them of due process of law and equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States, violative of intergovernmental immunity secured by 4 U.S.C. 111, violative of the due process and equal protection clauses of the Constitution of Alabama of 1901, and violative of Code of Ala. 1975, Section 40-18-3 by virtue of Defendants' policy of allowing taxpayers who disagree with the tax to disregard it while insisting upon its payment by those who cannot persuade their

employers to cease payroll deductions or who otherwise lack the necessary clout with Defendants to prevent its levy and collection.

D. That the Court award plaintiffs, as compensatory damages suffered as a result of Defendant's deprivations of the constitutional rights described herein, a sum equal to the amount of tax each has paid to the Defendant since January 1, 1988.

E. That the Court enjoin and restrain Defendant from continued deprivations of the constitutional rights described herein by way of the occupational tax.

F. That the Court allow plaintiffs and their counsel all costs in this proceeding and payment of a reasonable attorneys fee, determined by 42 U.S.C. 1988 and/or pursuant to equitable common fund principles to attorneys for plaintiffs and the classes represented by them.

G. That the Court award plaintiffs such other and further relief as the Court, after a full hearing, deems appropriate.

BAXLEY, DILLARD & DAUPHIN

/s/ William J. Baxley

WILLIAM J. BAXLEY

/s/ Joel E. Dillard

JOEL E. DILLARD
Attorneys for Plaintiffs
2000 Sixteenth Avenue South
Birmingham, Alabama 35205
(205) 939-0995

Plaintiffs' Addresses
c/o Baxley, Dillard & Dauphin
2000 16th Avenue South
Birmingham, AL 35205

Defendants' Addresses
Jefferson County
c/o Edwin A. Strickland
County Attorney
214 Jefferson County Courthouse
Birmingham, AL 35263

Randy Godeke, Director
Jefferson County Department of Revenue
100-A Courthouse
Birmingham, AL 35263

IN THE CIRCUIT COURT FOR JEFFERSON COUNTY
TENTH JUDICIAL CIRCUIT, ALABAMA

JASON RICHARDS, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	CASE NO. CV 92-3191
	)	
JEFFERSON COUNTY, et al.,	)	
	)	
Defendants.	)	

ANSWER

Come now the Defendants, Jefferson County, Alabama, a political subdivision of the State of Alabama, and Randy Godeke, individually, and in his official capacity as Director of the Jefferson County, Alabama, Department of Revenue, and for answer to the Complaint state as follows:

FIRST DEFENSE

Admission and Denial

1. For answer to paragraph 1 of the Complaint, Defendants admit that Plaintiffs attempt to invoke the jurisdiction of this Court pursuant to 42 U.S.C. § 1983, 4 U.S.C. § 101 and Rule 57, Alabama Rules of Civil Procedure. Defendants admit that Jefferson County, Alabama, is the proper venue for this case.

2. For answer to paragraph 2 of the Complaint, Defendants demand strict proof in that Defendants are without knowledge or information sufficient to from a belief as to the truth of the allegations regarding residence and employment of Jason Richards, Fannie Hill, George David

Dykes and Joan Foley Dykes. Defendants state that they are without sufficient information to form a belief as to the truth of the remaining allegations of paragraph 2 of the Complaint and demand strict proof.

3. For answer to paragraph 3 of the Complaint, Defendants admit that Plaintiffs attempt to invoke the provisions of Rule 23, Alabama Rules of Civil Procedure.

4. For answer to paragraph 4 of the Complaint, Defendants admit that Plaintiffs are subject to the Jefferson County occupational tax.

5. For answer to paragraph 5 of the Complaint, Defendants admit that there are numerous taxpayers.

6. For answer to paragraph 6 of the Complaint, Defendants deny that the Jefferson County occupational tax is unconstitutional.

7. For answer to paragraph 7 of the Complaint, Defendants deny that the occupational tax is unconstitutional. Defendants state that they are without information and belief as to any conflicts which may or may not exist between Plaintiffs and demand strict proof.

8. For answer to paragraph 8 of the Complaint, Defendants state that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and demand strict proof.

9. For answer to paragraph 9 of the Complaint, Defendants admit that on or about January 1, 1988, Jefferson County, Alabama, began to levy and collect the occupational tax. Defendants deny that Plaintiffs paid said tax involuntarily. For answer to the remaining portion of paragraph 9 of the Complaint, Defendants plead the language of the occupational tax ordinance which is attached hereto as Exhibit "A" and Act No. 406, Legislature 1967, attached as Exhibit "B."

10. For answer to paragraph 10 of the Complaint, Defendants plead the plain language of the Jefferson

County occupational tax which is attached hereto as Exhibit "A" and which speaks for itself.

11. For answer to paragraph 11 of the Complaint, Defendants plead the plain language of the Jefferson County occupational tax which is attached hereto as Exhibit :A" and which speaks for itself.

12. For answer to paragraph 12 of the Complaint, Defendants plead the plain language of the Jefferson County occupational tax which is attached hereto as Exhibit "A" and which speaks for itself.

13. Admitted.

14. For answer to paragraph 14 and 15, Defendant states as follows:

The Jefferson County Occupational Tax Ordinance No. 1120 comports with the express authority granted to the Jefferson County Commission by Act No. 406, Legislature of Alabama, 1967 ("Act No. 406"). Act No. 406 reflects an acknowledgment of the Alabama Legislature that numerous person, corporations, firms, associations or entities were already required by State law to pay a license or privilege tax to either the State of Alabama or to the County pursuant to Article 1, Chapter 20, Title 51; Sections 176, 177, 178, 180, 182, 183, 184, 186, 429 and 826 in Title 51 of the Code of Alabama of 1940, as amended. Act No. 406 authorized the County Commission to levy a license or privilege tax upon any person, corporation, firm, association or other entity and business, vocation, occupation, calling or profession that is not required by law to pay any license or privilege tax to either the State of Alabama or the County by any of the foregoing provisions of the Code of Alabama.

The legislature in Section 6, Act No. 406, further limited the authority granted to the County Commission by declaring that:

> Section 6. No license or privilege tax levied by the governing body of the county on any person for engaging in any business shall be at a rate which is in excess of the rate of license or privilege tax levied by the largest municipality of the county on the same or similar type business activity.

Accordingly, the Jefferson County Occupational Tax ordinance incorporates the same exclusions from its provisions as are required by Act No. 406. Further, the Jefferson County Occupational Tax Ordinance specifically excludes "domestic servants employed in private homes" for the reason that such persons are excluded from the occupational tax of the City of Birmingham which is the largest municipality located in Jefferson County, as required by Section 6, Act No. 406, above.

15. Defendants deny paragraphs 16 and 17. For further answer thereto, Defendants assert that federal employees engaged in a business, vocation, occupation, calling or profession are treated exactly the same as all other persons without regard to the nature of their employer. That is, only those federal employees that are not required by law to pay any license or privilege tax to either the State of Alabama or the County by any of the foregoing quoted provisions are subject to the occupational tax.

The purpose of Act No. 406 was to authorize the County to impose a license or privilege tax upon persons who are engaging in such businesses, vocations, occupations, callings and professions without paying any license tax through either the State or County.

Additionally, the rate of the Jefferson County Occupational Tax is exactly the same for all persons subject thereto. Said rate is .05 percent of the gross receipts of such persons earned in Jefferson County. There is no difference in rate between persons employed by the fed-

eral government and all other persons who are subject to the tax.

16. Defendants deny paragraph 18. For further answer Defendants assert that Defendants have instituted a reasonable and orderly procedure to effect collection of the occupational tax. Substantial start up work and effort has been required to develop the required information so as to identify those persons subject to the tax and to initiate tax withholding procedures by employers in the County. Substantial efforts were required to achieve such withholding action by the federal employers in Jefferson County. No exceptions from the tax beyond those required by Act No. 406 have been established or allowed. A program to collect arrearages from persons who have failed or refused to pay the tax as required by law is ongoing.

17. Defendants deny paragraph 19.

18. For answer to paragraph 20 of the Complaint, Defendants deny that they have deprived Plaintiffs of any right, privilege or immunity secured by the Constitution or laws of the United State of America.

19. Denied.

20. For answer to paragraph 22 of the Complaint, Defendants admit that the occupational tax at issue in this case has been previously challenged in the state courts on both federal and state constitutional claims. Defendants aver that the occupational tax at issue in this case has already been held constitutional by the Alabama Supreme Court in the case *Beddingfield v. Jefferson County*, 527 So.2d 1270 (Ala. 1988). Further, that the Plaintiffs in *Beddingfield* had the opportunity to appeal the *Beddingfield* decision of the Alabama Supreme Court to the Supreme Court of the United State, which opportunity said Plaintiffs failed to pursue and thereby waived and forfeited and which decision of the Alabama Supreme

Court is now a matter adjudged and conclusive upon and res judicata to all of the rights of Plaintiffs asserted herein. Defendants deny the remaining allegations of paragraph 22 of the Complaint.

21. Denied.

22. For answer to paragraph 24 of the Complaint, Defendants deny that they have deprived Plaintiffs of any right, privilege or immunity secured by the Constitution or laws of the United States of America.

23. Denied.

24. For answer to paragraph 26 of the Complaint, Defendants admit that the occupational tax at issue in this case has been previously challenged in the state courts on both federal and state constitutional claims. The Alabama Supreme Court has held that the occupational tax at issue in this case is constitutional. *Beddingfield v. Jefferson County*, 527 So.2d 1270 (Ala. 1988). Defendants deny the remaining allegations of paragraph 26 of the Complaint.

25. Denied.

26. Denied.

27. Denied.

28. Denied.

29. Denied.

30. Defendants deny each and every remaining allegations of the Complaint and demand strict proof thereof.

SECOND DEFENSE

Res Judicata

Defendants plead the affirmative defense of res judicata as a complete or partial bar to the causes of action set forth in the Complaint.

THIRD DEFENSE

Collateral Estoppel

Defendants plead the affirmative defense of collateral estoppel to the causes of action set forth in the Complaint.

FOURTH DEFENSE

Non Claim Statute

Defendants plead the Alabama non claim statute as a complete or partial bar to the relief requested in the Complaint.

FIFTH DEFENSE

Laches

Defendants plead the defense of laches as a complete or partial bar to the causes of action set forth in the Complaint.

SIXTH DEFENSE

Statute of Limitations

Defendants plead the applicable statute of limitations as a complete or partial bar to the relief sought in the Complaint.

SEVENTH DEFENSE

No Deprivation of Federally Protected Right

Defendants aver that Plaintiffs have not been deprived of any right, privilege or immunity secured by the Constitution or laws of the United States of America.

EIGHTH DEFENSE

Voluntary Payment

Defendants aver that all payments made by named Plaintiffs have been voluntary.

NINTH DEFENSE

No Buck Act Violation

Defendants plead the provisions of 4 U.S.C. § 106 as a defense to Plaintiffs' Buck Act claims.

TENTH DEFENSE

Immunity

Defendant, Godeke, pleads the defense of immunity whether absolute, qualified, good faith or discretionary function.

ELEVENTH DEFENSE

Waiver

Defendants plead the affirmative defense of waiver as a complete or partial bar to the causes of action set forth in the Complaint.

TWELFTH DEFENSE

General Defenses

1. Defendants assert that the Complaint fails to state a cause of action upon which relief can be granted.

2. Defendants plead good faith in all their dealings with Plaintiffs.

3. Defendants plead the general issue.

/s/ Edwin A. Strickland

EDWIN A. STRICKLAND
County Attorney
214 Jefferson County
Courthouse
716 North 21st Street
Birmingham, AL 35263
(205) 325-5688

/s/ Jeffrey M. Sewell

JEFFREY M. SEWELL
Assistant County Attorney
214 Jefferson County
Courthouse
716 North 21st Street
Birmingham, AL 35263
(205) 325-5688

/s/ Charles S. Wagner

CHARLES S. WAGNER
Assistant County Attorney
214 Jefferson County
Courthouse
716 North 21st Street
Birmingham, AL 35263
(205) 325-5688

CERTIFICATE OF SERVICE

I have served a copy of the foregoing **ANSWER** on counsel for all parties, by placing same in the U.S. Mail, postage prepaid and properly addressed, this the 29 day of May, 1992.

/s/ Jeffrey M. Sewell

JEFFREY M. SEWELL
Assistant County Attorney

cc: William J. Baxley
Joel E. Dillard
Baxley, Dillard & Dauphin
2000 - 16th Avenue South
Birmingham, AL 35205

Thomas L. Stewart
Gorham, Waldrep, Stewart, Kendrick,
Bryant, Battle & Alfano
2101 - 6th Avenue North
Suite 700
Birmingham, AL 35203

Act No. 406

AN ACT

To authorize the governing body of any county of the state having a population of 500,000 or more, according to the last or any subsequent Federal census, to levy a business or privilege tax upon any business, vocation, occupation, calling or profession for which a license or privilege tax is not required for either the State of Alabama or the county by the laws of the State of Alabama, and to limit the amount of any such business or privilege tax.

Be It Enacted by the Legislature of Alabama:

Section 1. This Act shall apply to any county of the State of Alabama having a population of 500,000 or more, according to the last or any subsequent federal census, and to no other county.

Section 2. As used in this Act, the following words and terms have the meanings hereby ascribed to them; "the county" means a county subject to this Act; "the governing body" means the governing body of the county, whether it be a county commission, board of revenue or other governing body; "person" includes any natural person, corporation, firm, association or other entity; and "business" includes business, vocation, occupation, calling or profession; "license or privilege tax" shall not include any sales or use tax.

Section 3. The purpose of this Act is to equalize the burden of taxation by authorizing the county to impose a license or privilege tax upon persons now engaging in certain businesses without paying any license tax thereon to either the state or county.

Section 4. The governing body of the county is hereby authorized to levy a license or privilege tax upon any person for engaging in any business for which he is not required by law to pay any license or privilege tax to

either the State of Alabama or the county by any of the following Article 1, Chapter 20, Title 51; Sections 176, 177, 178, 180, 182, 183, 184, 186, 429, and 826 in Title 51 of the Code of Alabama of 1940 as amended.

When a person is engaged in more than one business for one or more of which a license or privilege tax is required to be paid to the State or the county but for one or more of which no license or privilege tax is required to be paid to the State or county, the county governing body shall have the authority to levy a license or privilege tax upon that business, or those businesses, for engaging in which such person is not required to pay any license or privilege tax to the State or county.

Section 5. The tax hereby levied shall be paid to that officer or employee of the county chargeable with the duty of collecting license or privilege taxes payable to the county.

Section 6. No license or privilege tax levied by the governing body of the county on any person, for engaging in any business shall be at a rate which is in excess of the rate of license or privilege tax levied by the largest municipality of the county on the same or similar type of business activity.

Section 7. It is hereby provided that all laws or parts of law in conflict with provisions of this Act are hereby repealed to the extent of such conflict.

Section 8. The provisions of this Act are severable; and should any part of this Act be declared unconstitutional or void, such declaration shall not affect the remaining provisions.

Section 9. This Act shall become effective upon its approval by the Governor or upon its otherwise becoming a law.

Approved September 7, 1967.

Time: 10:37 A.M.

ORDINANCE NO. 1120

An Ordinance to establish a license or privilege tax on persons engaged in any vocation, occupation, calling or profession in Jefferson County who is not required by law to pay any license or privilege tax to either the State of Alabama or the County as set out herein.

BE IT RESOLED AND ORDAINED by the Jefferson County Commission as follows:

Section 1. DEFINITIONS. That the following words, when used in this Ordinance, shall have the meaning ascribed to them, except where the context clearly indicates or requires a different meaning:

(A) The word "person" shall mean any natural person. Whenever the word "person" is used in any clause prescribing and imposing a penalty in the nature of a fine or imprisonment, the work as applied to a partnership or other form of unincorporated enterprise shall mean the partners or members thereof, and as applied to corporations shall mean the officers and directors thereof.

(B) The words "vocation, occupation, calling and profession" shall mean and include the doing of any kind of work, the rendering of any kind of personal services, or the holding of any kind of position or job within Jefferson County, Alabama, by any clerk, laborer, tradesman, manager, official or other employee, including any nonresident of Jefferson County who is employed by any employer as defined in this section, where the relationship between the individual performing the services and the person for whom such services are rendered is, as to those services, the legal relationship of employer and employee, including also a partner of a firm or an officer of a firm or corporation, if such partner or officer receives a salary for his personal services rendered in the business of such firm or corporation, but they shall not mean or include domestic servants employed in private homes

and shall not include businesses, professions or occupations for which license fees are required to be paid under any General License Code of the County or to the State of Alabama or the County by any of the following: Chapter 12, Article 2, Title 40; §§40-21-50, 40-21-52, 53, 54 and 55; 40-21-57, 58, 59, and 60; 40-16-6; and 27-4-9 of the Code of Ala. 1975, as amended.

(C) The words "vocation, occupation, calling and profession" shall also mean and include the holding of any kind of office or position either by election or appointment, by any federal, state, county or city officer or employee where the services of such official or employee are rendered within Jefferson County, Alabama.

(D) The word "employee" shall mean and include any person engaging in or following any vocation, occupation, calling or profession within the meaning of subsection (B) of Section 1 of this Resolution and Ordinance.

(E) The word "employer" shall mean and include any person, business, firm, corporation, partnership, association or any other kind of organization who or that employs any person in any vocation, occupation, calling or profession in Jefferson County, Alabama, within the meaning of subsection (B) of Section 1 of this Ordinance.

(F) The words "gross receipts" and "compensation" shall have the same meaning, and both words shall mean and include the total gross amount of all salaries, wages, commissions, bonuses or other money payment of any kind, or any other consideration having monetary value, which a person receives from or is entitled to receive from or be given credit for by his employer for any work done or personal services rendered in any vocation, occupation, calling or profession, including any kind of deductions before "take home" pay is received; but the words "gross receipts" and "compensation" shall not mean or include amounts paid to traveling salesmen or

other workers as allowance or reimbursement for traveling or other expenses incurred in the business of the employer, except to the extent of the excess of such amounts over such expenses actually incurred and accounted for by employee to the employer.

(G) The word "licensee" shall mean and include any person required to file a return or to pay a license fee under this ordinance.

(H) The word "county" shall mean Jefferson County, Alabama.

(I) The words "Director of Revenue" shall mean the Director of Revenue of Jefferson County, Alabama.

(J) The singular shall include the plural and vice versa, and the masculine shall include the feminine and the neuter.

Section 2. LICENSE FEES REQUIRED. It shall be unlawful for any person to engage in or follow any vocation, occupation, calling or profession as defined in Section 1 within the County on and after the 1st day of January, 1988, without paying license fees to the County for the privilege of engaging in or following such vocation, occupation, calling or profession, which license fees shall be measured by one-half percent (1/2%) of the gross receipts of each such person.

Section 3. WHERE WORK DONE OR SERVICES PERFORMED BOTH WITHIN AND WITHOUT THE COUNTY. In cases where compensation is earned as a result of work done or services performed both within and without the county, the license fees required under this Ordinance shall be computed by determining upon the Oath of the employer, or if required by the Director of Revenue upon the oath of the employee, that percentage of the compensation earned from the proportion of the work which was done or performed within the County.

Section 4. EMPLOYERS TO WITHHOLD LICENSE FEES AND FILE RETURNS. Each employer shall deduct from each payment due each employee the amount of the license fees measured by one-half per centum (1/2%) of the compensation due each employee beginning on the 1st day of January, 1988. The payments required to be made on account of such deductions by employers shall be made monthly to the County for the monthly periods ending January 31, February 28, March 31, April 30, May 31, June 30, July 31, August 31, September 30, October 31, November 30 and December 31st of each year, on or before the twentieth day of the month next following the end of each such monthly period, and each employer shall at the same time make a return in connection therewith on a form made available to such employer by the Director of Revenue at the office of the Director of Revenue, provided that, if the total amount deducted from payments made to or due all employees of an employer is less than fifty ($50.00) dollars during each calendar month of the previous calendar year, then such employer may elect, for the current calendar year, to remit such deductions to the County for the quarterly periods ending March 31st, June 30th, September 30th and December 31st of such following calendar year, on or before the twentieth day of the month next following the end of each such quarterly period, and each such employer shall at the same time make a return in connection therewith on a form made available to such employer by the Director of Revenue at the office of Director of Revenue. Provided, however, that the failure or omission by any employer to deduct such license fees shall not relieve an employee from the payment of such license fees and compliance with the requirements for making returns as provided in this Ordinance, or with any regulations promulgated under this Ordinance. Each employer shall file in the office of the Director of Rev-

enue on or before January 31, of each year a return on a form made available by said Director of Revenue, at the office of said Director of Revenue, which return shall show the gross amount of compensation of each employee, the amount of license fees deducted and paid by such employer for all or any part of the preceding calendar year and the last known address of each such employee. Each employer shall keep accurate records of all such compensation, deductions, license fees, payments and returns. Such records shall be kept and maintained by each such employer for not less than five (5) years subsequent to the date such compensation was earned.

Section 5. RETURNS TO BE FILED BY EMPLOYEES. When a monthly or quarterly return, as required by Section 4 hereof is not filed by an employer and the license fees are not paid to the County by such employer monthly as herein provided, the employee for whom no return has been filed and no payment has been made shall file a return with the Director of Revenue on or before the 1st day of the second month next following the end of each such monthly or quarterly period, showing in said return his gross receipts subject to license fees for such month or quarter, and he shall also file a return with the Director of Revenue on or before January 31st of each year thereafter in which his employer has failed to file any monthly or quarterly return required in the preceding calendar year, showing on said return the gross receipts subject to license fees during the preceding calendar year. If for any reason all license fees of a person subject to the provisions of this Ordinance were not withheld by his employer from his gross receipts, such person shall file each return required by this Section on a form obtainable at the office of the Director of Revenue. In addition to the gross receipts earned by him, such return shall show such other pertinent information as may be required by the Director of Revenue. Each

person making a return required by the Section shall, at the time of filing thereof, pay to the County the amount of license fees due under this Ordinance; provided, however, that any portion of the license fees deducted at the source shall be deducted on the return and only the balance, if any, shall be due and payable at the time of filing said return. Each employee shall keep accurate records of all such compensation, deductions, license fees, payments and returns. Such records shall be kept and maintained by each such employee for not less than five (5) years subsequent to the date such compensation was earned.

Section 6. DUTIES OF THE DIRECTOR OF REVENUE. It shall be the duty of the Director of Revenue to collect and receive all license fees imposed by this Ordinance and to keep records showing the amounts received by him from each employer. All moneys received by the Director of Revenue shall be deposited in a duly approved depository.

Section 7. INVESTIGATIVE POWERS OF THE DIRECTOR OF REVENUE. The Director of Revenue or any agent or employee designated by him is hereby authorized to examine the books, papers and records of any employer or supposed employer, or of any license or supposed license, in order to determine the accuracy of any return made, or if no return was made to ascertain the amount of license fees due under the terms of this Ordinance by such examination. Each such employer or supposed employer or licensee or supposed licensee shall give to the Director of Revenue, or to his duly authorized agent or employee, the means, facilities and opportunities for the making of such examination and investigation. The Director of Revenue is hereby authorized to examine any person under oath concerning any gross receipts which were or should have been shown in a return, and to this end he may compel the production of

books, papers, records and the attendance of all persons before him, whether as parties or as witnesses, whom he believes to have knowledge of such gross receipts or compensation.

Section 8. REGULATIONS MAY BE PROMULGATED. The Director of Revenue may prescribe, adopt, promulgate and enforce reasonable rules and regulations not in conflict with this Ordinance relating to any matter or thing pertaining to the administration and enforcement of the provisions of this Ordinance, including but not limited to provisions for the re-examination and correction of returns as to which overpayment or underpayment is claimed or found to have been made, and the regulations so promulgated shall be binding upon all licensees and employers.

Section 9. INFORMATION TO BE CONFIDENTIAL. Notwithstanding any resolutions and ordinances to the contrary, any information gained by the Director of Revenue or any other official or agent or employee of the County as a result of any returns, investigations, hearings, or verifications required or authorized by this Ordinance shall be confidential, except for official purposes, or in accordance with proper judicial order, or the enforcement of this Ordinance, and any person or agent divulging such information, except as herein permitted, shall upon conviction be subject to a fine of not more than One Hundred Dollars ($100.00) or to imprisonment of not exceeding thirty (30) days, or to both such fine and imprisonment.

Section 10. INTEREST AND PENALTIES.

(A) All license fees imposed by this Ordinance which are delinquent, that is, which remain unpaid after they become due shall, subject to the provisions hereinafter set out, bear interest at the rate of twelve percentum

(12%) per annum, and any person who has failed to pay such license fees when the same became due shall, subject to the provisions hereinafter set out, also be charged a penalty of ten percentum (10%) of the amount of such unpaid license fees. Any person or employer who fails or refuses to withhold any license fees payable under this Ordinance, or who fails to pay such fees after withholding the same to the County at the time it is due, as provided under the provisions of Section 4 hereof, shall become liable to the County for such fees, as well as for the interest thereon at the rate of twelve percentum (12%) per annum, and for the aforesaid penalty. Provided, however, that the minimum penalty imposed against such person or employer shall be Three Dollars ($3.00). Provided the Director of Revenue, if a good and sufficient reason is shown for the failure to pay the tax within the time required, may waive or remit the penalty and interest, or a portion of either, upon payment of the tax due.

(B) Any person or employee who shall fail, neglect or refuse to pay a license fee as by this Ordinance required, or any employer who shall fail to withhold said license fees, or to pay over to County such license fees, penalties or interest imposed by this Ordinance, or any person required to file a return under the provisions of Section 5 of this Ordinance, who shall fail, neglect or refuse to file such return, or any person or employer who shall refuse to permit the Director of Revenue or any agent or employee designated by him, in writing, to examine his books, records and papers for any purpose authorized by this Ordinance, or who shall knowingly make any incomplete, false or fraudulent return, or who shall attempt to do anything whatever to avoid the full disclosure of the amount of gross receipts or compensation in order to avoid the payment of the whole or any part of a license fee, shall upon conviction be subject to punishment within the limits of and as provided by law

for each offense. Such punishment shall be in addition to the penalties imposed under subsection (A) of this section.

Section 11. EXTENSION OF TIME FOR MAKING RETURN. The Director of Revenue, for good cause, may extend the time for making any return required under the provisions of this Ordinance, but the time for filing any such return shall not be extended for a greater period than thirty (30) days from the day such return is due to be made and shall not prevent penalty and interest from accruing during the period of such extension.

Section 12. USE OF LICENSE FEES. All money derived from license fees under the provisions of this Ordinance shall be paid to the General Fund of the County and expended as authorized by law.

Section 13. SEVERABILITY. The provisions of this Ordinance are severable. If any provision, section, paragraph, sentence or part thereof, or the application thereof to any employer or licensee or class or persons, shall be held unconstitutional or invalid, such decision shall not affect or impair the remainder of the Ordinance, it being the legislative intent to ordain and enact each provision, section, paragraph, sentence and part thereof, separately and independently of each other.

Section 14. REPEAL OF RESOLUTION AND ORDINANCES. All resolutions and ordinances or parts of resolutions and ordinances in conflict with this Ordinance are to the extent of such conflict hereby repealed.

Section 15. EFFECTIVE DATE. This Ordinance shall be in full force and effect on and after January 1, 1988, and from year to year thereafter, until repealed.

Hoyt BEDDINGFIELD, Jr., in his capacity as the acting director of finance of the City of Birmingham, et al.

v.

JEFFERSON COUNTY, et al.

87-316.

Supreme Court of Alabama.

May 20, 1988.

City Challenged constitutionality of county ordinance establishing occupational tax. The Circuit Court, Jefferson County, Braxton L. Kittrell, Jr., J., upheld ordinance, and appeal was taken. The Supreme Court, Beatty, J., held that: (1) statute authorized county to levy occupational tax; (2) statute was general, rather than local legislation; and (3) statute authorizing levy of tax provided for collection of such tax.

Affirmed.

BEATTY, Justice.

This is an appeal by Hoyt Beddingfield, Jr., as acting director of finance of the City of Birmingham, and the City of Birmingham from a judgment upholding a Jefferson County ordinance, specifically Ordinance No. 1120, establishing an occupational tax. We affirm.

The action was filed on October 19, 1987, and was consolidated for trial with the case of *Carolyn Phillips, et al. v. Jefferson County Commission.*

Ordinance No. 1120 levies a license or privilege tax on natural persons engaged in any vocation, occupation, calling, or profession who are not required by law to pay any license or privilege tax to the state or county. This tax was promulgated by Jefferson County under the authority of Act No. 406, approved September 7, 1967, *Acts of Alabama 1967,* at 21-23. Pertinent sections thereof are quoted below:

"AN ACT

"To authorize the governing body of any county of the State having a population of 500,000 or more, according to the last or any subsequent Federal census, to levy a business or privilege tax upon any business, vocation, occupation, calling or profession for which a license or privilege tax is not required for either the State of Alabama or the county by the laws of the State of Alabama, and to limit the amount of any such business or privilege tax.

"Be It Enacted by the Legislature of Alabama:

"Section 1. This Act shall apply to any county of the State of Alabama having a population of 500,000 or more, according to the last or any subsequent federal census, and to no other county.

". . .

"Section 3. The purpose of this Act is to equalize the burden of taxation by authorizing the county to impose a license or privilege tax upon persons now engaging in certain businesses without paying any license tax thereon to either the state or county.

"Section 4. The governing body of the county is hereby authorized to levy a licenuse or privilege tax upon any person for engaging in any business for which he is not required by law to pay any license or privilege tax to either the State of Alabama or the county by any of the following: Article 1, Chapter 20, Title 51; Sections 176, 177, 178, 180, 182, 183, 184, 186, 429, and 826 in Title 51 of the Code of Alabama of 1940 as amended.

"When a person is engaged in more than one business for one or more of which a license or privilege tax is required to be paid t the State or the county but for one or more of which no

license or privilege tax is required to be paid to the State or county, the county governing body shall have the authority to levy a license or privilege tax upon that business, or those businesses, for engaging in which such person is not required to pay any license or privilege tax to the State or county.

"Section 5. The tax hereby levied shall be paid to that officer or employee of the county chargeable with the duty of collecting license or privilege taxes payable to the county.

"Section 6. No license or privilege tax levied by the governing body of the county on any person, for engaging in any business shall be at a rate which is in excess of the rate of license or privilege tax levied by the largest municipality of the county on the same or similar type of business activity."

Allegations of unconstitutionality made below were denied by the defendants. Following discovery, testimony taken in open court, and stipulation, the Jefferson Circuit Court upheld the ordinance, and this appeal followed. Because a number of issues are presented here, weshall treat them *seriatim.*

I.

Did Act No. 406 manifest a legislative intent to authorize Jefferson County to levy an occupational tax?

Plaintiffs' argument here is multifaceted. First, they contend that the stated purpose of the Act is to authorize a tax only upon "certain businesses," and not "occupations." Further, plaintiffs argue that § 6 of Act No. 406 does not permit a privilege tax "which is in excess of the rate of license or privilege tax levied by the largest municipality of the County on the same or similar type of business activity," meaning that Jefferson County could

not implement the Act by levying a tax in excess of that which had been levied by Birmingham. Because Birmingham had no such privilege tax in 1967, plaintiffs argue, any county tax under Act No. 406 would offend the Act. Finally, according to plaintiffs, the county's own implementation of the Act when it was enacted in 1967, as only a licensing code authorizing licensing of certain businesses, gives weight to the limiting nature of Act No. 406.

We must respectfully reject these argument. While we are mindful that taxing statutes are to be strictly construed, *State v. Seals Piano Co.*, 209 Ala. 93, 95 So. 451 (1923), it does not offend that principle to uphold this statute. Indeed, the express language of the Act authorizes the county "to levy a business or privilege tax upon any business, vocation, occupation, calling or profession." When the intention of the legislature is so apparent from the face of a statute that there can be no question as to its meaning, there is no room for construction. *American Institute of Psychotherapy v. Alabama Board of Examiners in Psychology*, 410 So.2d 54 (Ala. 1982). Thus, § 4 is to be read as authorizing a privilege tax "upon any person for engaging in any business [or occupation]."

Municipal licensing authority has existed at least since the Code of 1907, see Code of 1975, § 11-51-90. Birmingham originally adopted its licensing code as early as 1916, and in 1967 it had an extensive catalog of business categories subject thereto. However, it was not until 1970 that Birmingham itself adopted Ordinance No. 70-76, providing for a license fee for occupations and professions. Given the fact that Birmingham had possessed the authority under state law to impose an occupational privilege tax since 1907, it is clear that by § 6 of Act No. 406 the legislature, cognizant of that power, decided to restrict the county's authority to a maximum as established by Birmingham's occupational privilege tax. It is a fundamental principle that the legislature, in enacting a

statute, is presumed to have full knowledge and information on prior and existing law on the subject of the statute. *Ex parte Love* 513 So.2d 24 (Ala. 1987). Thus, we cannot agree with plaintiffs that Act. No. 406 required Jefferson County to implement its authority contemporaneously thereunder, or lose it altogether. The Act itself contains no such limiting language. True, Jefferson County did not implement the "occupational" aspect of the statute until 1987. Nevertheless, the authority to do so continued.[1]

Finally, we are not persuaded by plaintiffs' argument that, in construing Act No. 406, this Court should defer to the county's alleged contemporaneous interpretation of the Act. Because we do not find the Act doubtful in its meaning, we need not resort to an alleged contemporaneous interpretation by the county.

II.

Is Act No. 406 unconstitutional as violating limitations on local legislation as explained in *Peddycoart v. City of Birmingham*, 354 So.2d 808 (Ala. 1978)?

According to plaintiffs, Act No. 406 violates the mandate of *Peddycoart* in two respects: (1) the general laws of Alabama have preempted the field of license and privilege taxation to prevent reliance upon local legislation, and thus Act No. 406 violates Section 105 of the Constitution; and (2) the population classification of Act No. 406 (500,000 or more), which makes it a "bracket bill," lacks a reasonable relationship with the statute's purpose.

Commenting upon *peddycoart* in *Freeman v. Purvis*, 400 So.2d 389 (Ala. 1981), this Court stated:

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[1] By stipulation, it was established that, while Birmingham itself adopted its license code as early as 1916, and possessed an extensive license code in 1967, it did not establish its occupational tax until 1970.

"We must point out, however, that following the *Peddycoart* decision which was released on January 13, 1978, two amendments to the Alabama Constitution of 1901 were ratified by the people: Amendment No. 375, ratified on November 20, 1978, and Amendment No. 389, ratified on November 4, 1980. Because the latter Amendment is pertinent, we quote it here:

> "Any statute that was otherwise valid and constitutional that was enacted before January 13, 1978, by the legislature of this state and was a general act of local application on a population basis, that applied only to a certain county or counties or a municipality or municipalities of this state, shall not be declared invalid or unconstitutional by any court of this state because it was not properly advertised in compliance with section 106 of this Constitution.
>
> "'All such population based acts shall forever apply only to the county or counties or municipality or municipalities to which they applied on January 13, 1978, and no other, despite changes in population.'
>
> ". . .
>
> "The effect of this Amendment was to validate all 'bracket bills' enacted without advertising before January 13, 1978, the date of the *Peddycoart* decision, and which were not otherwise unconstitutional . . ."

Act No. 406 was approved in 1967, well before the date of the *Peddycoart* decision of January 13, 1978, and, as a general law of local application, was validated by Amendment 389 even though it was not advertised under Section 106 of the Constitution of 1901.

Even under pre-*Peddycoart* standards, Act No. 406 must survive a constitutional attack based on a supposed lack

of relationship between its purpose and the expressed population classification. As observed in *Dearborn v. Johnson*, 234 Ala. 84, 173 So. 864 (1937), on that subject, much is left to legislative discretion in fixing that classification and in recognizing that purpose. In *Coach v. Rodgers*, 253 Ala. 533, 45 So.2d 699 (1950), this Court reviewed a number of its decisions that had upheld "bracket bills" of substantial minimum, but no maximum, population classifications:

> "We have numerous decisions which give illustration to the principle. We will not undertake to analyze them all, but only such as seem to shed light upon the instant suit. In the case of *Wages v. State*, 225 Ala. 2, 141 So. 707 708 [1932], this Court was dealing with an act similar to the one here involved. By its terms it had application to counties having a population of three hundred thousand or more according to the last or any subsequent federal census. The Court there undertook to apply the principle which we have stated above. The act was held to be general, although it then applied only to Jefferson County. We quote from that opinion as follows: 'The wisdom of the law and the necessity for its enactment and the classification adopted were addressed to the lawmaking body. It may be well said, this body understood and appreciated the necessity of furnishing protection to the people in the matter legislated upon in the act, in the larger and more populous counties of the state, which was not necessary or practicable in the smaller counties.'
>
> "We have numerous cases which bring out that application of the principle wherein it was observed that counties of large population may reasonably be supposed to be differently served in many respects than counties of smaller population and there is sometimes drawn a distinc-

tion between a classification based upon a minimum population and a classification based upon a population with both a minimum and a maximum limit. The case of *State ex rel. Shirley v. Lutz*, 226 Ala. 497, 147 So. 429 [1933], brings out that distinction. That case was dealing with an act regulating the business of plumbing in counties having a population of 100,000 or more according to the last or any subsequent federal census. The Court emphasized the different principles applicable when there is only a minimum but not a maximum number. When there is only a minimum, the Court thought a more liberal application of the principle should be made.

". . .

"*In the Opinion of the Justices*, 249 Ala. 511, 31 So.2d 721, we were responding to a legislative inquiry as to a proposed act applicable to counties of 400,000 population or more according to the last or any subsequent federal census, which would require the payment to such counties of a license tax of one cent on each gallon of gasoline. We thought there was a reasonable relation of the subject matter of the Act to counties of such population because we thought that in large counties the load of traffic on the highways by reason of such population justified the legislature in providing additional income in order to take care of its effect."

It is clear from the terms of Act No. 406 that its purpose was to provide more populous counties with a source of revenue by authorizing them to impose a privilege or license tax. The record establishes, if common sense does not, that needs and demands for services made upon county governments keep pace with urbanization and increases in population, necessitating new

opportunities for revenue. It follows that populous counties experience greater demands for costly services than those sparsely populated. In this case, therefore, the requisite relationship was established. *Peddycoart, supra.*

Is Act No. 406 unconstitutional under § 105, Constitution of 1901?

Plaintiffs maintain that Act No. 406 is constitutional under Section 105, Constitutional of 1901. The pertinent part of that section states that "[n]o special, private, or local law . . . shall be enacted in any case which is provided for by a general law." Plaintiffs reason that Act No. 406 is infirm under that provision because of the prior enactment of Article I, Chapter 20, Title 51, Code of 1940, now Article II, Chapter 12, Title 40, Code of 1975, which provides:

> "Every person, firm, company, corporation or association, receiver or trustee, but not a governmental subdivision, engaged in any business, vocation, occupation, calling or profession herein enumerated or who shall exercise any privilege hereinafter described for which a license or privilege tax is required shall first procure a state license, and a county license when so required, and shall pay for the same or shall pay for the exercise of such privilege the amounts hereinafter provided, and comply with all other provisions of this title."

Section 40-12-40, Code of 1975.

Act No. 406, as we have stated, is a general law, not a local law; thus Section 105 is inapplicable.

III.

Finally, plaintiffs contend that Act No. 406 fails for want of an express provision therein for the collection of an occupational tax. Plaintiffs argue further that a read-

ing of Act No. 406 to so provide would violate Section 104(15) of the Constitution of 1901, which prohibits the enactment of a local law "[r]egulating either the assessment or collection of taxes."

For the reasons previously discussed, Act No. 406 is a general, not a local, law; hence, this provision, Section 104(15), is inapplicable. And, as the trial court found:

> "The Courts have long held that there is a distinction between the terms 'assessment' and 'levy' and held that 'assessment,' as used in Subdivision (15), relates to property taxes rather than privilege taxes. *Opinion of the Justices,* 266 Ala. 363, 369, 96 So.2d 634 (1957) (quoting *Standard Oil Co. v. Limestone County,* 220 Ala. 231, 234-235, 124 So. 523 (1929)."

Moreover, the grant of authority to "levy a license or privilege tax upon any person" in § 4 of Act No. 406 was in itself authority to collect such a tax. Cf., *Syracuse Trust Co. v. Board of Supervisors,* 13 N.Y.S.2d 390 (Sup.Ct.), *affirmed,* 258 A.D. 17, 15 N.Y.S.2d 920 (1939); to "levy" is to "collect" a tax. *Black's Law Dictionary* (5th ed. 1979) at 816.

Let the judgment be affirmed.
AFFIRMED.

TORBERT, C.J., and MADDOX, JONES, ALMON, SHORES and ADAMS, JJ., concur.